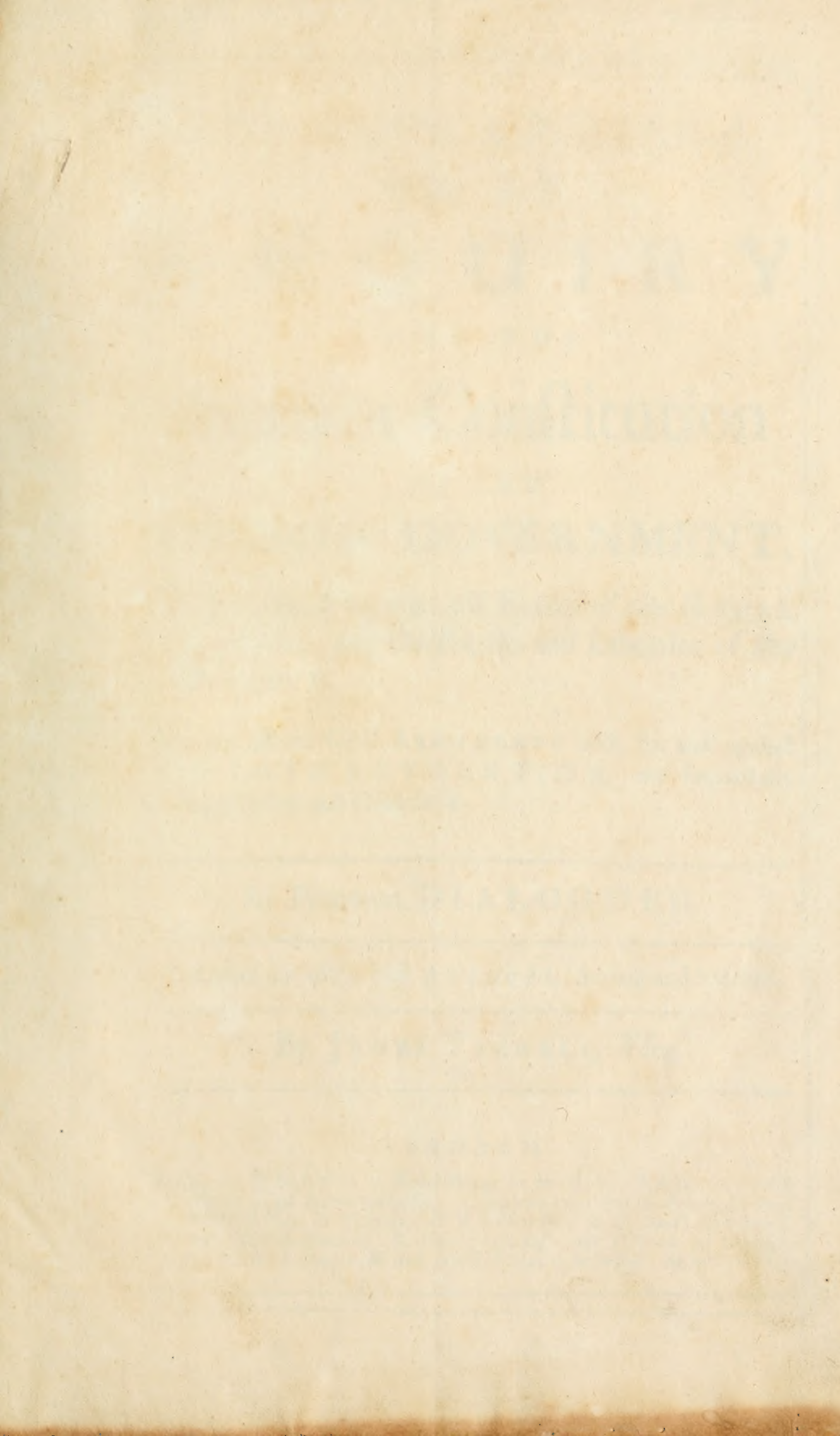




DNB - A valuable résumé of the Whig Doctrines

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BIBLIOTHECA POLITICA:
OR, AN
ENQUIRY
INTO THE
Antient Constitution
OF THE
ENGLISH GOVERNMENT,

With Respect to the just Extent of the REGAL
POWER, and the Rights and Liberties of the
SUBJECT.

Wherein all the Chief ARGUMENTS both for and against
the LATE REVOLUTION, are Impartially
Represented and Consider'd.

In Fourteen DIALOGUES.

Collected out of the best AUTHORS, Antient and Modern.

By JAMES TYRRELL, Esq;

L O N D O N,

Printed for D. BROWNE at *Exeter-Change* in the Strand, A. BELL in *Cornhil*,
J. DARBY in *Bartholomew-Close*, A. BETTESWORTH in *Pater-noster-Row*,
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J. BATTLE in *Pater-noster-Row*, and E. SYMON in *Cornhil*. M.DCC.XVIII.

BIBLIOTHECA POLITICA

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LONDON

Printed for W. Bower at Exeter-Street in the Strand, MDCCLXXII.



THE P R E F A C E



HAVING out of Curiosity, for some Years before, as well as since, the late wonderful and happy Revolution, carefully perus'd, for the Satisfaction of my own Conscience, all Treatises of any Value that have been publish'd concerning the Origin and Rights of Civil Government ; as well of Monarchy as other kinds of it, and also concerning the antient Government and fundamental Constitutions of this Kingdom : I found it necessary, in order to the better retaining of what I had read, and making a more certain Judgment upon it, to write down the most considerable Arguments on both sides, as well of those who will have *Monarchy* to be *Jure Divino*, as of those who allow it *only to Government in general* ; of those who maintain absolute Subjection, or *Passive-Obedience* as they call it, as well as of those who hold *Resistance* in some Cases to be necessary ; of those that maintain our *Monarchy* to have been *limited* by the Constitution it self, and of those that suppose all our *Rights* and *Liberties*, nay, the very *Being of Parliaments*, to owe their Origin wholly to the gracious Concession and Favour of our former Kings.

Having made impartial Collections of this Nature, and shew'd them to some Persons of Judgment, they thought they might be of great Use for satisfying some Mens Doubts concerning lawful Obedience to their late Majesties King *William* and Queen *Mary*. These Gentlemen look'd upon it as the best and most ingenuous way of convincing the Scrupulous, to propose the Arguments fairly on both sides, without interposing my own Judgment ; but leaving it to the intelligent and impartial Reader, to embrace that Side where he found the most rational and strongest Arguments.

This Task, tho troublesome enough, I was prevail'd with to undertake, not for the sake of Fame, but merely for the publick Good and Happiness of my Country.

Being also sensible that a Subject of this Importance deserv'd a great deal of pains, and to be handled in a more artificial Method than the old dry Scholastick Way of Objection and Solution ; I thought it would prove more pleasant as well as profitable to the Reader, especially

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cially those of our young Nobility and Gentry, for whom I principally design'd this Undertaking, to digest what I had writ into Dialogues or Conversations, suppos'd to be held betwixt two intimate Friends, who, notwithstanding their different Principles in Politicks, had always maintain'd a strict and generous Correspondence. I was the more inclin'd to this Method, because I observ'd that writing of Controversies by way of Dialogue, according to true Rules, had obtain'd well among intelligent Readers; and because my Subjects are of a nice nature, and that my Collections contain strict Inquiries into the Principles laid down in the Writings of several Persons of great Reputation for Learning and Ingenuity.

I was sensible how invidious a Task it must prove to write on purpose against so many Great Men, and how troublesom and tedious it would be to my self, as well as to the Reader, to confute any Author Page by Page; which Method, I perceiv'd, had made Answers to Books very unacceptable to the World. And tho I grant that writing by way of Dialogue has likewise Objections and Difficulties, as being more diffusive, and taking up more time, where either the one or the other Disputant is apt to rove from the Subject; yet I make bold to affirm, that this may be in a great measure prevented by the Writer, if he keep close to the Question, and not start a fresh Hare till the old one is run down. So that a Man may make and answer Objections in as few Words this way, as by Polemical Discourses. And tho it be granted, that Matters of Form in Dialogues are more tedious, yet the Reader, as well as Traveller, will find, that the Pleasantness of the Road often makes amends for its being somewhat about.

Whether I have truly pursued the Rules of Dialogue, must be left to the Reader's Judgment; but I can justly affirm, that I have carefully avoided all bitter and reflecting Language on either side, having design'd these Discourses for *common Places of Argument*, and not Forms of Railing. I have also declin'd shewing my self a Party, or giving my own Opinion in any Question, and therefore have not made either of my Disputants the other's Convert; tho nothing is more easy in writing Dialogues as well as Romances, than to make the Knight-Errent always beat the Giant.

In all my Discourses I have consider'd and contracted the best Arguments I could find in the most considerable antient and modern Authors, either in *Latin* or *English*, especially in those that have writ on either side since the late Revolution. As for those in our own Language, wherever I conceiv'd any Author to speak so well, or to argue so closely, that to put it in other Words would make it worse; I have always put the Arguments of both the Disputants in their own Words: and because I would not act the Plagiary, have truly quoted the Book and Page from whence I took them. For other Authors, I hope none will take it ill, if I have sometimes made bold to contract their Arguments, without altering their Sense or Words further than by putting in or out an Expression to make the Style run more smooth. I also desire them not to think that I write on purpose to confute them, since my Design is not to write against any Man's Opinions, as they are his, but only to examine them freely, in order to an impartial Discovery of the Truth. And since some of them have been perhaps too commonly and favourably received by our ordinary Gentry and Clergy, if any ingenious Person will take upon him farther

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ther to assert or vindicate any Opinion here question'd by the one or the other Disputant, and will clearly and fairly shew me where any Argument might have been put more home, or any Objection more solidly answer'd; I shall, instead of taking it amiss, give him my thanks for his pains, and do here promise to insert all, or at least the Substance of his Arguments under their proper Heads with all due Acknowledgments: only I desire him, whoever he be, to forbear all harsh Reflections and coarse Language; otherwise he must pardon me if I only take notice of his Reasons, and neglect his Passions.

I hope no candid Reader will slight those Dialogues, which treat of Opinions that at present may seem to be of fashion, *viz. the Divine Right of Monarchy*, and Succession from the Patriarchal Power given by God to *Adam*; for every one remembers the time when our Pulpits and Presses would scarce suffer any other Doctrine to be preach'd or publish'd on those Subjects. It fares with some Political Opinions as with Fashions, which are never so generally receiv'd and worn, as when they have been in vogue at Court. Those Divines and Lawyers, who were the Inventors or new Vampers of them, commonly receiv'd the greatest Rewards and Preferments: so that as the Court-Tailors did with Fashions, they invented such Doctrines and Opinions as were most burdensom and uneasy to all sorts of People, except a few Great ones, who were to be Gainers by them.

I desire it may be observ'd, that however odd or unreasonable these Doctrines may seem to most Men now, yet certainly they must formerly have seem'd to carry a great Appearance of Truth, since they were able to captivate the Reason of the major part of both Houses of Convocation in the beginning of King *James* the First's Reign, when by several of their Canons they declar'd them to be the only sure Foundations of all Civil Authority, and of Obedience to it; as appears by the Treatise, call'd *Bishop Overal's Convocation-Book*. And tho neither King nor Parliament thought fit to give those Canons the Stamp of Civil Authority, and make them Law, yet this did not hinder several of the Learned Clergy and Laity from embracing those Opinions; such as Sir *Robert Filmer*, and his Vindicator Mr. *Bohun*, and the Reverend and Learned Bishop *Sanderfon*, with divers others of Note: whose Arguments I have made use of and consider'd in some of these Dialogues, but with as little Reflection as possible, since I know what is due to the Memory of such Great and Worthy Persons. This was the reason why I only made use of the initial Letters of their Names, or the Titles of their Books, in the Margin; which are explain'd by an Index at the beginning of this Work, as they were at the beginning of each Dialogue in the first Edition: what is not so mark'd, I desire the Reader to look upon the Words, not the Sense, to be my own; for I don't pretend to be an Inventor of new Notions in Politicks, there being no Man more sensible than my self of that old *Latin* Sentence, *Nihil dictum quod non dictum prius*.

Tho the Title of the first Dialogue mentions no more than the discussing of the Question, whether Monarchy be of Divine Right, yet the natural Power of Fathers, Masters of Families, and Freeman, are distinctly treated of, and closely enquir'd into, as being the first Elements or Principles of all Civil Powers, as those alone out of which at first they could be regularly made: And tho I have made one of the Disputants argue pretty stiffly against the *Divine Right of Monarchy*, and of *Indefeasible Hereditary Succession to Crowns*; yet I declare

clare I am not what the World calls a *Republican* or *Commonwealths-Man*, nor do I hereby design or desire Alterations in the Government either of Church or State, since none can admire our excellent Constitution more than my self: much less do I prefer an *Elective* to an *Hereditary* Succession to the Crown, for I justly esteem the latter to be the most excellent, if not the only means to prevent all Disputes and Civil Wars about *Succession*; and therefore is never to be departed from, unless when some *Natural* or *Moral* Disability in the Person, or other unavoidable Necessity, render it absolutely inconsistent with the publick Peace and Safety of the Kingdom.

Therefore as a Man may be truly devout without Superstition, which is a Corruption or Abuse of Religion; so I think a Subject may be truly Loyal and Obedient to his Prince, tho he has never heard of, or does not believe any *Divine Right of Monarchy* deriv'd from *Adam* and *Noah*; or of *Hereditary Succession*, from God's Promise, That *Cain* should rule over *Abel*. Nor have I any Aversion to Absolute Monarchy as such, could I be assur'd that Princes would be always as wise and as good as they ought to be, for I own that several Nations have never been more happy than under such Monarchs. The *Roman* Empire, for instance, never arrived to a greater height of Riches and Power, if we may believe Historians, than under *Nerva*, *Trajan*, and the two *Antonines*: So that the Fault is not in *Absolute Monarchy* as such, but in the general Corruption of human Nature, which rarely produces Persons of such Wisdom, Goodness, and other Abilities, as are requisite for so great a Trust.

I confess Subjects may be happy and contented enough, if they please, under any Form of Government, where the Governors are of equal Capacity and Honesty, and have a hearty Love and Concern for the common Good of their People; but where these are wanting, it is not mere Forms and empty Names that can make them so: Therefore I justly admire the Wisdom of the antient *German* and *Gothick* Nations, who prefer'd a *Limited* Monarchy to all other Forms of Government; as an excellent *Medium* between the Mischiefs of *Arbitrary Power*, and those Inconveniencies that attend Republicks, where either the common People or Nobility must govern.

I likewise hope, that tho I make one of my Disputants shew the Absurdity and fatal Consequences of *Sir Robert Filmer's* Principles, yet the Reader will not from thence infer, that I pass an absolute Judgment against them; much less have I done this out of any prejudice to *Sir Robert*, with whom tho I was never acquainted, I honour his Memory, because his Writings shew him to have been a Person of genteel Learning, and very ingenious: But whether his Principles be destructive to the Fundamental Constitution of this Government, I submit to the Reader's impartial Judgment; who I hope will, without Attachment to Party or Faction, determine according to the Merits of the Cause, and observe the Apostle's Rule, to try all things, and hold fast that which is good. I beg the Reader likewise to believe, that tho under the Name of a *Freeman* I have argued against an Opinion now and lately much in vogue, viz. That an absolute Irresistibility is an inseparable Prerogative of all Sovereign Powers, be they Monarchies or Commonwealths; yet no Man more abhors all unnecessary Resistance or Rebellion against Supreme Magistrates, and is more for an absolute Submission by all particular Persons, whether publick or private, in case of the highest Injuries and Oppressions done

done to themselves alone, and where the common Good of the Community is not immediately concern'd: And this I own to be their Duty, not only out of a generous Regard to the Peace and Tranquillity of the Commonwealth, whereof they are Members, (and which ought not to be disturb'd, to revenge or redress a few private Injuries) but also from the express Command of God in the Holy Scripture, which expressly forbids not only all Revenge, but even Self-Defence, whilst the Supreme Powers act legally, tho perhaps contrary to the strict Rules of Justice and Equity in such particular Cases. Yet for all this, I doubt whether those Precepts do extend to all Resistance whatever, *viz.* of any whole Nation or great Body of Men, whose Preservation or Freedom from intolerable Slavery and Oppression, may render it necessary for the Good of the Commonwealth, and is no other way to be procur'd but by a vigorous Resistance, or else joining with some powerful Neighbours, who shall interpose for their Deliverance. So that if such a Resistance be ever lawful, it can be upon no less momentous an account, than that of a *General Invasiō* either of the Lives, Liberties, Religion, or Properties of a whole or major part of a Nation; as they are establish'd by the Law of Nature, or the Fundamental Constitution of those particular Governments where such insupportable Tyranny and Oppressions are then exercised. And if this be not lawful in such extraordinary Cases, it would seem as if God had prefer'd the *unjust Power* or Force, and the outward *Grandeur* of the *Governors*, before the *Good* and *Happiness* of the *Governed*; which is contrary to the main End of all Civil Government, *viz.* the common Good and Happiness of Mankind, even as those who are against all Resistance must allow.

But whether such Resistance be not in these Cases a lawful, nay only Means for the Safeguard and Deliverance of such oppress'd Nations; I leave it to the Judgment of the impartial Reader, upon the Perusal of my Dialogues on this Subject.

For however criminal some have endeavour'd to render the Doctrine of Resistance even in such cases, yet I must still believe, till convinc'd of the contrary, that the Question being only Moral or Political, and not about any Point of Faith or Law, the Affirmative may be safely maintain'd, without any Guilt of Heresy or Treason.

I further desire it may be observ'd, that tho in the Discourses on this Subject I have made one of the Disputants make use not only of the Arguments, but of the Expressions of two Learned Divines in some late Treatises on this Head; yet I did it not from any Design to write against them, or those Opinions as theirs, since others made use of the same Arguments or Texts on the same View before them. But as it must be confess'd, that none have manag'd the Controversy with better Argument and greater Eloquence, I hope they will not take it amiss; if, out of a just Value to their Learning, I have put that part of the Controversy in their Words, as the best I could meet with, and which I durst not pretend to alter; but as for the Answers, I have given them in my own, or else in the Words of two late Writers, who undertook to answer what those Divines had writ.

And since I don't take all that has been laid down on either side for unquestionable Demonstrations, I hope neither Party will take it ill that I have fairly represented the strongest and most plausible Arguments on both sides; for Truth will not look the worse, or lose ground,

ground, if it appears in its true natural Dress against its Opposite, Error. But if a great deal of what has been said, by Persons too violent on either side, appear to be mere precarious Opinions, whose best Authority is from the great Names of those that have broach'd them; I hope no indifferent Person will take it ill, if I endeavour to discover those Mistakes, since all Men are liable to Errors: and as none can be more sensible of this than my self, so when either of those Learned Persons, or any other, shall convince me of weak or false Reasonings, I promise to retract them with the first Opportunity.

As to my Discourses upon the Supreme Legislative Power, and the Fundamental Constitution of our Government; together with the Antiquity of Great Councils or Parliaments; and whether they always consisted of Bishops, Barons or Temporal Lords, and Commons; is a Question to be decided only from the Histories and Laws of the Nation. And I dare assure the Reader, that I have advanc'd nothing upon it on either side, but what I have produc'd good Authorities for, either from the Histories and Governments of our own or neighbouring Nations, or from the Collections of our *English Saxon* Laws, and antient as well as modern Writers upon our Laws; and lastly, from our Statutes since the reputed Conquest, without omitting any Authority that I judged material to be urged on either part.

As for those Parliamentary Records here quoted, they are either such as have been already printed from the Rolls in the Tower, or other Offices at *Westminster*, and so are allow'd for authentick, or else are such as have not yet been made publick; for the Truth of which, the Reader may search the Records themselves, if he have any Distrust that I have not quoted them fairly. And I can farther assure the Reader, from better Judgments than my own, that he will find more here than ever was yet publish'd at once, or perhaps at all, upon those important Subjects.

As to the sixth Dialogue, I must own the Subject of it to be one of the hardest and most important, tho perhaps in the Judgment of some, the dryest and most unpleasant part of my Task, *viz.* to adjust who were antiently the constituent Parts or Orders of Men that made up our Legislative Assemblies. That the Bishops, Abbots, Priors, Earls, and chief Thanes or Barons, were principal Members, is granted by all Parties; but whether there were from the very Original of these Great Councils, or till long after the coming in of the *Normans*, any Representatives for the Commons, as we now call them, in distinction from the Lords Spiritual and Temporal, is made a question. The first who rais'd the Doubt, for ought I can find, was *Polydore Virgil*, an *Italian*, who wrote the History of *England* in the sixteenth Century, and it hath been continued by some Antiquaries since that time: tho the first who undertook to prove the contrary, was the Author of a Treatise publish'd by *James Howel* in the *Cottoni Posthuma*, under the Name of *Sir Robert Cotton*, about 1654. And after him, this Notion of the Bishops, Lords, and other Tenants *in capite*, being the sole Representative for the whole Nation in those Councils, was next printed in the second part of *Sir Henry Spelman's* Glossary, *Tit. Parliamentum*; where King *John's* Charter is brought as the main Argument to prove that Assertion. The next who appeared in Print on this Subject was *Sir William Dugdale* in his *Origines Juridicales*; who, tho he transcrib'd the same Notion and Arguments from *Spelman's*

man's Glossary ; yet he allows our Commons to have been always some way represented in Parliament, tho not by Members of their own chusing : notwithstanding which, he agrees with the Author of the Passage in the Glossary, that the Commons first began by Rebellion in the 49th of *Henry III.*

Which Opinions being look'd upon not only as novel and erroneous, but dangerous to the fundamental Rights and Liberties of the People of this Nation, they were oppos'd by *William Petit Esq;* in his Treatise, intitled, *The Rights of the Commons of England asserted, &c.* He was seconded by the Author of the Treatise, call'd, *Jani Anglorum facies nova.* Soon after both those Books were animadverted upon by Dr. *Brady*, in two Editions of his Answers to them ; but the Rights of the Commons were again vindicated by the Author of *Jani Anglorum, &c.* in another Treatise, intitled, *Jus Anglorum ab antiquo*, which has not yet been answer'd.

I have been the more particular in my Account of those Authors, because this Controversy being largely debated in them, I thought it proper, for saving the trouble of reading so many Books, to reduce all the material Arguments and Authorities made use of by both Parties, in this weighty Controversy, into this and the two following Dialogues ; and have, as near as I could, confin'd my self to the words of those Authors, as will appear by the Quotations in the Margin.

I must own, that having had a long and familiar Acquaintance with Mr. *Petit*, he furnish'd me with divers Authorities both in Manuscript and Print, not hitherto taken notice of by any Writer on this Subject. And had Dr. *Brady*, or any of his Friends, thought fit to communicate their Objections against any thing I have writ, I should have fairly publish'd them, with such Answers as the Case might have requir'd.

I hope the Reader will pardon me, if I seem too prolix in the Interpretation of divers Words and Phrases, us'd by Dr. *Brady* and his Opponents in a quite different Sense from our antient Historians, Records, and Statutes ; for if the various Use and equivocal Meanings of those Expressions be truly stated and laid open, according to the several Ages in which those Authors liv'd, or such Laws were made, I reckon this great Dispute will soon be at an end.

I think it needless to insist upon the Nature of the other Dialogues. The Design of them is obvious, from the summary Account of the Subject prefix'd to them ; so that all I shall add, is, that in each of them, as well as the former, there are many incident Questions handled of Law, History, and Divinity, that relate naturally to the Subject. The Reader will easily find this, by consulting the large Alphabetical Index annex'd to this Edition, which makes it a compleat Common-place Book for understanding our Constitution : a thing hitherto very much wanted, and not to be met with, but by consulting multitudes of Books, at no small Expence both of Money and Time.

I can assure the Reader, that all the Authorities here made use of from Historians and Records, are truly cited, without leaving out or concealing any thing that I thought made for or against either Opinion. And as for the Records, they are either such as having been sufficiently try'd, have pass'd for authentick betwixt Dr. *Brady* and his Antagonists, or else such as I my self have seen and examin'd, and consider'd the Purport of them carefully. If any suspect the contra-

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ry, I have given them a fair Opportunity, by my Quotations, to examine the Truth of it themselves; so that by weighing and comparing Historian with Historian, and Record with Record, and sometimes both together, as the Subject-Matter requires, they may be able to make a right and impartial Judgment of the whole.

I hope that the Arguments, in all the following Discourses, will prove so plain and convincing to careful and unprejudic'd Readers, that they may as easily discover the Truth, as an honest and unbiass'd Jury-Man can, at a Trial, judge on which side the Right and Justice of the Cause inclines, upon the bare hearing of Evidence on both sides, even before the Court hath summ'd it up. But on which side soever the Reader brings in his Verdict, I heartily wish that God may direct his Mind, and guide his Judgment to find out and embrace the Truth; which as it was the only end of my writing at first, is now the end of republishing these Dialogues: which, since the principal Subject of them has again so lately been controverted, not only by the Pen, but by the Sword, 'tis hop'd may be of use to settle the Minds of People, who to their Cost have been so frequently misled, because they did not understand our Constitution.



AN ALPHABETICAL CATALOGUE of the
LETTERS, by which the Names and
Books of Authors are denoted in the Margin
of the following DIALOGUES.

- B. A. A. **D**R. Brady's *Answer to Mr. Cook's Argumentum Anti-Norman-
nicum.*
- B. A. J. Dr. Brady's *Animadversions on Jani Anglorum facies nova.*
- B. A. P. Dr. Brady's *Answer*, Edic. in Folio, to Mr. Petit's *antient Rights
of the Commons of England.*
- B. C. P. Bohun's *Conclusion to Sir Robert Filmer's Patriarcha.*
- B. D. F. Bohun's *Defence of Sir Robert Filmer.*
- B. G. Dr. Bracy's *Glossary at the end of his Answer to Petit's antient
Rights of the Commons.*
- B. P. H. Dr. Brady's *Preface to his History.*
- B. P. P. Bohun's *Preface to Patriarcha.*
- B. S. P. P. Bishop Sanderson's *Preface to the Power of the Prince.*
- D. O. G. Filmer's *Directions for Obedience to Governors.*
- F. A. M. M. Sir Robert Filmer's *Anarchy of Mix'd or Limited Monarchy.*
- F. D. O. Sir Robert Filmer's *Directions to Obedience.*
- F. F. G. J. Filmer's *Freeholders Grand Inquest.*
- F. O. G. Sir Robert Filmer's *Observations on Forms of Government.*
- F. O. G. Sir Robert Filmer's *Observations on Grotius De Jure Belli &
Pacis.*
- F. P. Sir Robert Filmer's *Patriarcha.*
- F. P. O. Sir Robert Filmer's *Preface to Observations on Aristotle.*
- F. P. O. Sir Robert Filmer's *Preface to his Political Observations.*
- G. J. B. Grotius *de Jure Belli & Pacis.*
- H. D. L. *Harmony of Divine Law.*
- H. J. Dr. Hickes's *Jovian.*
- H. P. O. *History of Passive-Obedience.*
- H. S. B. R. Heylin's *Stumbling-Block of Rebellion*, Folio.
- H. T. M. Hunton's *Treatise of Monarchy.*
- J. A. A. *Jus Anglorum ab Antiquo.*
- J. E. M. G. Dr. Johnston's *Excellency of Monarchical Government.*
- L. O. L' Estrange's *Observators.*
- P. J. N. Puffendorf *de Jure Nature & Gentium.*
- P. N. M. *Patriarcha non Monarcha.*
- P. P. R. C. Petit's *Preface to the Rights of the Commons of England as-
serted.*
- P. R. Plato *Redivivus.*

An Alphabetical Catalogue, &c.

P. R. C. *Petit's Antient Rights of the Commons of England asserted.*

R. H. C. *Rushworth's Historical Collections.*

S. C. R. *Dr. Sherlock's Case of Resistance.*

S. P. P. *Bishop Sanderson's Preface to Archbishop Usher's Power of the Prince.*

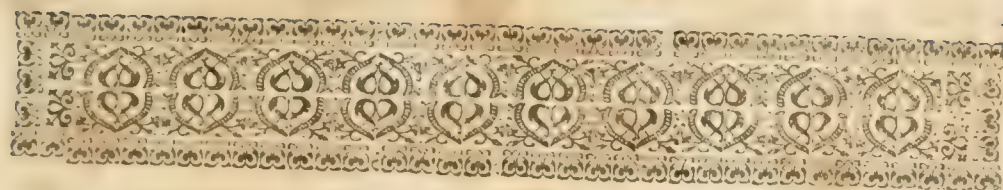
T. T. G. *Two Treatises of Government.*

V. J. R. *Vindiciae Juris Regii.*

U. S. A. S. *Mr. Dudley Diggs's Unlawfulness of Subjects taking up Arms against their Sovereign, Edit. 1643.*



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ERRATA.

PAGE 39. Line. 24. for *me* read *be*. P. 54. l. 25. for *enjoin'd* read *enjoy'd*. P. 92. l. 25. for *Belkrap* read *Felknap*. P. 108. l. 23. for *Winzerus* read *Winzetus*. P. 181. l. 53. for *Salves* r. *Slaves*. The Page which shou'd be 186, is 191. P. 246. l. 48. for *effluxum* read *effluxum*. At the bottom of p. 253. for *A. r. F.* id. the top of p. 254. P. 280. l. 9. from the bottom, for *Oecomi* r. *Oeconomii*. lb. l. 14. from the bottom, for *Fedipl matica*, r. *Re Diplomat a*. P. 281. l. 2. from the bottom, for *Optimatis* r. *Optimates*. P. 285. l. ult. for *Lords* r. *Lex*. P. 289. l. 1. from the bottom, for *Comines* r. *Homines*. P. 314. l. 5. from the bottom, for *thequi* r. *the*. P. 317. l. 10. for *Principium* r. *Principum*. P. 338. l. 24. from the bottom, for *hough* r. *tho*. P. 369. l. 10. from the bottom, dele *In* before *Inquilini*. P. 386. l. 6. for *pervaded* r. *persuaded*. P. 464. l. 24. from the bottom, for *accountable* r. *unaccountable*. P. 475. l. 21. from the bottom, for *Medioque* r. *Mediaque*. P. 507. l. 5. for *the* r. *they*. P. 513. l. 18. from the bottom, for *Rex* r. *Lex*. P. 576. l. 11. for *State* r. *fate*. P. 629. l. 5. for *declared* r. *declared*.



Bibliotheca Politica :
OR AN
ENQUIRY
INTO THE
ANTIENT CONSTITUTION
OF THE
English Government.

DIALOGUE I.

Whether Monarchy be Jure Divino.

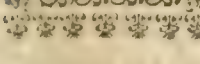
BETWEEN

Mr. FREEMAN, a Gentleman ; and Mr. MEANWELL,
a Civil Lawyer :

Supposed to be immediately upon the late King JAMES's first Departure.

F.  OOD morrow, Sir : What ! at your Study thus early this Morning.

 M. That is no wonder, if you were acquainted with my Hours : But pray, Sir, may I not likewise ask you what extraordinary Occasion brings you out of your Lodgings so much sooner than your ordinary Time ?

 F. Why, Sir, I'll tell you. Being awake very early this Morning, and not able to sleep for thinking on the great Change that might happen, let either the King or Prince get the better ; and hearing some odd Rumours last Night of the King's Intentions to go away : I was resolv'd to get up, and go to the Coffee-house, to hear what News ; where I had scarce sat down, before a Gentleman comes in from *Whitehall*, and brings us a certain Account, that the King withdrew himself this Morning between three and four of the Clock, no Body knows whither, (tho' most believe he is gone after the Queen into *France*) which I thought would be so surprizing (I will not say welcome) to you, that being so near your Lodgings, I thought it would

be worth while to step up, and tell you of it, and take your Thoughts of this great (and I hope happy) Change, which so great a Revolution is likely to produce in this Nation.

M. I thank you, Sir, for your Kindness, tho' it is not half an Hour ago, that one I employ in some Business relating to a Client of mine, came hither, and gave me the same account, tho' it was no great Surprize to me; for ever since *Sunday*, that the King sent the Queen and Prince away, I believ'd that he gave the Game for lost.

F. I must confess I was of another Mind, and thought, that when he had secured the Queen and Child, he would have had one Brush with the Prince before he could have got to *London*; and if he had had the worst of it, he could have but gone away at last. But to leap away on this manner, and to lose three Kingdoms without ever striking one stroke, it is not, I confess, suitable to that high Character his Admirers have always had of his Courage and Conduct.

M. Alas! good King: What would you have him do? Or whom could he rely on, when some of his near Relations, and divers of those whom he had raised almost from nothing, had deserted him? How could he then trust an Army of Mercenaries, who being most of them but the Dregs of the People, would, it is likely, rather have delivered him up to the Prince, than have ventured their Lives for him.

F. What you have said concerning his Majesty's Relations and Confidents deserting him, makes rather against than for the King's Cause; since it cannot be supposed they would have left a Prince to whom they were so much obliged, to join themselves with his Enemy, from whom they had no reason to expect greater Advantages than they had already; unless they had been satisfied in their Consciences, that the Protestant Religion establish'd in these Nations, and also our Civil Rights and Liberties, were in imminent danger of being utterly lost and destroyed. And tho' I grant that some of the King's Officers and Soldiers went over to the Prince; yet, considering how few they were that did so, not being (as I am credibly informed) above seven or eight hundred Men at the most, and what great Numbers of Men he had left with him; he might, methinks, have turned out those Officers he suspected, and put others in their rooms, who would have engaged to live and die with him; and if this would not have done, he might have sent those Regiments he most suspected back to *London*: And then reckoning the *Scotch* and *Irish* Forces that came lately over, besides the Papists he had in his Army, and those who, having more Courage than Conscience, could never expect to fight for a Prince, who would pay them better: I am confident (if this had been done) he might, after the going over of those few Troops, have made up as good, if not a better Army than the Prince's; and so need not have scampered last Week from *Salisbury* in that haste he did, whilst the Enemy was near fifty Miles off. But as it is, I am very well satisfied with all that hath happen'd in this great Revolution, and convinced of the Truth of that old Saying, *Quos perdere vult Jupiter, dementat prius.*

M. So far I go along with you, that God doth often make use of the Wickedness and Treachery of Men, to bring his great Designs about; but whether God hath ordained this great Revolution, as you call it, for a Deliverance or Punishment to this Nation, I am yet in doubt: For if you please to consider how much those two Causes have contributed to this turn of Affairs, I suppose, if you argue according to my Principles, we must own, that tho' this Change hath happen'd by God's permissive Providence (as all things else, tho' never so ill) yet whether he doth approve of all that hath been done to procure it, I much doubt; since if divers of our Nobility, with some of our Clergy, had not quitted their Doctrines of Passive Obedience and Non-Resistance, so long owned by the Church of *England*, this Revolution could not have happen'd at all, or at least not so suddenly, as it did: So that indeed I must confess, I am not only grieved at his Majesty's hard Fortune, but also stand amazed, and cannot but reflect with wonder on the strange Vicissitude of worldly Affairs, to see a Great King, who but last Week commanded a powerful Army of more than forty thousand Men, forced out of his Throne, and made to fly his Kingdom, by a Prince that did not bring half that Number into the Field. And who can sufficiently bewail the King's Misfortunes, who hath been at once betrayed by the ill Advice of his Counsellors, the Treachery of his Friends, and the Cowardice of his Soldiers?

F. Methinks, Sir, there is no such great Cause of Wonder, much less of Concern in all this : For who can much admire that a Prince should be thus used, who had not only provok'd a powerful Enemy to invade him from abroad, but (by industriously labouring to introduce Popery and Arbitrary Government at Home) had lost the Hearts of almost all, except his Popish Subjects ; insomuch that many of his own Soldiers were so terrified with the Thoughts of being discarded (like the Protestant Army in *Ireland*) to make room for *Irish* and *French* Papists, that they had very little Courage to fight, when they saw Cashiering was the best Reward they could expect, if they proved victorious. And who can much pity a Prince, who would rather lose the Affections of his People, than displease a few Priests and Jesuits : So that if he suffers, he may thank himself ; it not being Religion, but Superstition which brought this Misfortune upon him. Since the King having got a Prince of *Wales*, and (as it is highly suspected) joined himself in a strict League with *France* for the Extirpation of Hereticks, it laid an absolute Necessity upon the Prince of *Orange* to come over, that, by the Assistance of the States of *Holland*, he might not only relieve us, but vindicate his own, and her Royal Highness his Princess's Right to the Succession, and secure his Country from a dangerous and powerful Invasion, which it was threatned with both by Sea and Land, whenever the Kings of *France* and *England* should be at leisure to join their Forces, to make War upon them ; which you know all *Europe* hath expected for above these two Years last past.

M. These things were somewhat, if they could be proved ; but indeed, to deal freely with you, I look upon this League, and the Story of the supposititious Birth of the Prince of *Wales*, as meer Calumnies cast out by wicked and crafty Men to render the King more odious to his People.

F. Nay, Sir, you don't hear me positively affirm either the one or the other, since I grant they are not yet made out ; but whosoever will consider all the Circumstances of the Birth of this Child, cannot but be strongly inclined to believe it an Impostor, notwithstanding all the Depositions that are taken to the contrary. And as for the *French* League, you may be sure, if there be any such thing, it is kept very private ; and yet I must tell you there are very high and violent Presumptions to believe it true ; or else why should the King of *France*, in a late Memorial to the Pope, complain that his Holiness, by opposing his Interest in *Europe*, had hindred him in these great Designs he had for the Extirpation of Heresie ? by which he must surely intend *England* or *Holland* ; Protestantism being sufficiently expelled out of his own Country already. And he could not do it in either of the other without the Consent and Assistance of his Brother the King of *England*. Or to what purpose should the King of *England* join with *France* to ruin *Holland*, and his own Son-in-Law into the Bargain, but to make a War meerly for Religion ; since neither the *Dutch*, nor the Prince their Stadt-holder, gave him, 'till now, any just Provocation ?

M. Well, however, these are but bare Suspicions and Presumptions, at most, and not Proofs ; and therefore in a doubtful Matter, as this is, if we ought to judge favourably of the Actions of others, much more of Princes, whose Councils and Actions, though private, yet are still exposed to the Censure and Calumnies of their Enemies ; and therefore, I hope, you will not blame me, if I freely confess, that I am deeply concerned to see an innocent and misled King forced to seek his Bread in a foreign Land ; and the more, since many of the Nobility, Gentry, and common People, have contributed so much to it, by taking up Arms against him ; and that so great a part of his own Army, and Officers, should, contrary to their Allegiance and Trust reposed in them, run over to the Enemy. Nay, that some of our Bishops and Clergy-men should, contrary to the so often acknowledged Doctrines of Passive-Obedience, and Non-Resistance, not only countenance, but be likewise active in such desperate Undertakings, and this in direct opposition to the known Laws of God, and this Kingdom ; which must needs make our Church a Scorn to our Enemies the Papists, and a Shame and Reproach to all Protestant Churches abroad, and render the People of *England* odious to all the Crowned Heads in *Europe*.

F. Well, Sir, I see you are very warm, and I hope more than the Cause deserves. You may judge as favourably of the King's Proceedings, and as hardly of the Actions of the Nobility, Gentry, Clergy and People in this Matter as you please. But yet I think I can make it as clear as the Day, that they have done

nothing by joining in Arms with the Prince of *Orange*, but what is justifiable by the Principles of Self-preservation, the Fundamental Constitutions of the Government, and a just Zeal for their Religion and Civil Liberties, as they stand secured by our Laws; unless you would give the King a Power of making us Papists, and Slaves, whenever he pleased. But as for your Doctrine of an absolute *Obedience without Reserve*, and the Divine Right of Monarchy and Succession, you need not be much concerned whether the Papists laugh at you or no, since there are very few of them (if any) who are such Fools themselves as to believe such frivolous Opinions. But indeed they have more reason to laugh at you whilst you maintain, than when you quit them; since as they have only rendered you a fit Object of their Scorn, so they would have made you but a more easie Sacrifice to their Malice. For what can Thieves desire more, than that those they design to rob, should think it unlawful to resist them? And what could the Papists have wish'd for more, than that our Hands being fetter'd by this Doctrine of an indefinite Passive-Obedience, our Lives, Religion and Liberties should lie at their Mercy? Which how long we should have enjoyed, whenever they thought themselves strong enough to take them away, the late cruel Persecutions, and Extirpations of the Protestants in *France*, *Savoy*, *Hungary*, and other Places, have proved but too fatal Examples; and therefore no wonder (let your high-flown Church-men write or preach what they please) if the Body of the Nobility, Gentry and People of *England* could never be persuaded to swallow Doctrines so fatal to their Religion, and destructive to their Civil Rights and Liberties both as Men and Christians.

And as for the Antiquity of these Doctrines, I think they are so far from being the ancient Tenets of the Church of *England*, that they are neither to be found in its Catechism, Thirty nine Articles, or Book of Homilies, taken in their true Sense and Meaning; though indeed there is something that may tend that way in some of the late Church Canons about fifty Years ago; but I do not look upon them as the ancient establish'd Doctrine of our Church, because these Canons are not confirmed, but condemned by two Acts of Parliaments, and consequently never legally established as they ought to be by the publick Sanction of the King and Nation. Our old Queen *Elizabeth's* Divines, such as Bishop *Bilson* and Mr. *Hooker*, being wholly ignorant of these Doctrines, nay, teaching in several Places of their Writings the quite contrary. Nor was this Doctrine of absolute Subjection, and Non-Resistance ever generally maintain'd, until about the middle of King *James's* Reign, when some Court Bishops and Divines began to make new Discoveries in Politicks as well as Divinity; and did by their Preaching and Writings affirm, that *the King had an absolute Power over Men's Estates*, so that it was unlawful in any case to disobey or resist his personal Commands, if they were not directly contrary to the Law of God; as may appear by Dr. *Harsnet*, then Bishop of *Chichester*, his Sermon upon this Text, *Give unto Cæsar the things that are Cæsar's*; wherein he maintained, *That all the Subjects Goods and Money were Cæsar's*, that is, the King's, and therefore were not to be denied him if he demanded them for the publick use; which Sermon (though ordered by the Lords and Commons to be burnt by the Hangman) yet was so grateful to the Court, that he was so far from being out of Favour for it, that he was, not long after, translated to *Norwich*, and from thence to the Archbishoprick of *York*. So likewise about the beginning of King *Charles I.* Dr. *Manwaring* preached before him; the Substance of whose Sermon was somewhat higher than the former, (*viz.*) *That the King was not bound by the Laws of the Land, not to impose Taxes or Subsidies without the Consent of Parliament, and that when they were so imposed, the Subjects were obliged in Conscience, and upon pain of Damnation, to pay them; which if they refused to do, they were guilty of Disloyalty and Rebellion.* For which Sermon he was impeach'd by the Commons in Parliament 4 *Car. I.* and thereupon sentenced by the House of Lords, to be disabled to hold or receive any Ecclesiastical Living, or Secular Office whatever, and also to be imprisoned and fined a Thousand Pounds. Notwithstanding all which, we find him presently after the Parliament was dissolved, not only at liberty, but also presented by the King to a rich Benefice in *Essex*, and not long after made Bishop of *St. David's*. So likewise one Dr. *Sibthorp* about the same time preached an Aflize-Sermon at *Northampton*, on *Rom. 13. 7.* wherein he maintained much the like Doctrines, as, *That it was the King alone that made the Laws, and that nothing could excuse from an*

Vide Bilson
of Christian
Subjection.
Edit. 1586.
p. 279, 280.

Hooker's Eccle-
siast. Policy,
L. 1. p. 11.

R. H. C. p.
605.

Ibid. 635.

a *Three Obedience to his Commands, but what is against the Law of God and Nature : And that Kings had Power to lay Pole-Money upon their Subjects Heads. But this much I have read, that this Sermon was licensed by Dr. Laud, then Bishop of St. Dun's, because Archbishop Abbot had refused to do it as contrary to Law, for which he was very much frowned upon at Court ; and it is supposed to have been one of the main Causes of his Suspension from his Arch-Episcopal Jurisdiction, which not long after happened. But as for this Sibberp, though he lived long after, (even 'till the King's Return) yet being (as Archbishop Abbot describes him) a Man of but small Parts or Learning, I cannot learn that he was ever prefer'd higher than the Parsonage of Brackley, and another in Northamptonshire, whose Name I have forgot.*

But I find a new Doctrine broach'd by some modern Bishops and Divines about the middle of the Reign of King James the First, That Monarchy was of *Divine Right, or Institution at least* ; so that any other Government was scarce warrantable or lawful : And of this new Sect we must more especially take notice of Sir R. F. who hath written several Treatises to prove this Doctrine, and which is worse, *That all Monarchs being absolute by Divine Institution, they cannot be limited or obliged either by Oaths, Laws or Contracts with their People, farther than they themselves shall think fit, or consistent with their supposed Prerogatives ; of which they only are to be the sole Judges.*

So that whoever will but consider from the Reign of our four last Kings, what strong Inclinations they had to render themselves absolute, and that few Divines, or Common, or Civil Lawyers were prefer'd in their Reigns to any considerable Place, either in Church or State, who did not maintain these new Opinions both on the Bench and in the Pulpit : You need not wonder when the Stream of Court Preferment ran so strong that way, if so many were carried away with it ; since it was but to expose themselves to certain Misery, if not to utter Ruin, to oppose it. All who offered by speaking or writing to maintain the contrary, being branded with the odious Names of Puritans, Commonwealths-men, Whigs, &c. some of whom you may remember were not long since imprisoned, fined, nay, whip'd for so doing. So that it was no wonder if there were but very few to be found who durst with so great hazard speak what they thought ; nor could any thing, but the imminent Danger upon our Laws, Religion and Properties, proceeding from the King's illegal Practices, have opened the Eyes of a great many Noblemen, Gentlemen and Clergy, who, contrary to the Opinions so much lately in vogue, did generously venture both their Lives and Estates, to join their Arms with the Prince of Orange against the King's unjust and violent Proceedings.

M. I do not doubt, notwithstanding all you have said, to prove before I have done, these Doctrines of Non-Resistance, and of the Divine Institution of Monarchy, to be most consonant to the Word of God, and to the Doctrine of the Primitive Church, and also to that of our Reformed Church of England. Nor were those Divines you mention in King James the First's Time, the Authors or Inventers of these Doctrines which were publicly received, and decreed by both Houses of that Convocation which began in the first Year of King James, and continued 'till the Year 1610, as appears by divers Manuscript Copies of the Acts or Decrees of this Convocation, the Original of which was lately in the Library founded by Dr. Cousins, late Bishop of Durham, besides a very * fair Copy, now to be seen in the Archbishop's Library at Lambeth : Which if you please to peruse, you may be quickly satisfied, that the Church of England (long before ever Sir R. F. writ those Treatises you mention) held that Civil Power was given by God to Adam and Noah, and their Descendants ; as also that absolute Subjection and Obedience was due to all Sovereign Powers, without any Resistance ; as claiming under those Original Charters : These Doctrines being there fully and plainly laid down and asserted, as the Doctrines of our Church. So that you deal very unjustly with the Memory of those Divines, as also of Sir R. F. to make them the first Broachers of it ; whereas you may find that it was the Opinion of the whole Convocation, for many Years before ever those Divines, or that Gentleman began to preach, or write upon this Subject. Nor were these the only Men who maintained these Principles ; but Archbishop Usher, and Bishop Sanderfen (whom I suppose you will not reckon among your flattering Court Bishops) have as learnedly and fully asserted those Doctrines, you so much condemn, as any of that Party you find fault with, and have very well proved

Vid. Archbp. Abbot's Narrative, R. H. C. p. 434.

F. P. c. 3. 7, 8.

See Cowel's Interpreter. Titles King, Parliament, Prerogative.

** This is since printed under the Title of Bishop Overal's Convocation-Book.*

proved all Resistance of the Supreme Powers to be unlawful, not only in absolute but limited Monarchies. Of the Truth of which you may sufficiently satisfy yourself, if you will but take the Pains to read the Learned and Elaborate Treatises written by those good Bishops, (*viz.*) The Lord Primate *Usher's* Power of the Prince, and Obedience of the Subject, and the Bishop of *Lincoln's* Preface before it; as also the said Bishop's Treatise *de Juramento*, written whilst he was Doctor of the Chair in *Oxford*.

F. I must beg your pardon, Sir, if I have never yet seen or heard of that Convocation Book you mention, much less of the Opinions therein contained; since there is no mention made of their Proceedings, in any History or Record of those Times either Ecclesiastical or Civil, as I know of. But this much I am certain of; that these Determinations or Decrees you mention, (call them which you please) never received the Royal Assent, much less the Confirmation of the King and Parliament, one of which (if not both) is certainly requisite to make any opinion either in Doctrine or Discipline to be received by us Lay-men for the Doctrine of the Church of *England*, otherwise the Canons made in 1640 would oblige us in Conscience, tho' they stand at this day condemned by Act of Parliament: So that however, even according to your own Principles, you cannot urge this Book as the Authoritative Doctrine of the Church of *England*, unless their Determinations had received the Royal Assent; which you yourself do not affirm they had; for you very well know that, as in Civil Laws, no Bill is any more than waste Parchment if once the King had refused to give his Royal Assent to it, so likewise in Spiritual or Ecclesiastical Matters, I think no Decrees or Determinations of Convocations are to be received, as binding either in points of Faith or Manners by us Lay-men, till they have received the Confirmation of the King, and the two Houses of Parliament: Or otherwise the Consequence would be, that if the King, who hath the Nomination of all the Bishopricks and Deaneries, as also of most of the great Prebendaries in *England*, of which the Convocation chiefly consists, should nominate such Men into those Places, which would agree with him to alter the present establish'd Reformed Religion and Government, and to bring in Popery or Arbitrary Power, the whole Kingdom would be obliged in Conscience to embrace it, or at least to submit without any contradiction to those Canons the King and Convocation should thus agree to make; which of how fatal a Consequence it might prove to the Reformed Religion in this Kingdom, this King's Choice of Bishops and Deans, such as he thought most fit for his turn, would have taught us when it had been too late.

M. You very much mistake me, Sir, if you believe that I urge the Authority of this Book to you, as containing any Ecclesiastical Canons, which I grant must have the Royal Assent; but whether that of the two Houses of Parliament, I very much question; since the King without the Parliament is Head of the Church, and divers Canons made under Queen *Elizabeth*, and King *James*, are good in Law at this day, tho' they were never confirmed by Parliament. But I only urge the Authority of this Book to you, to let you see that these Doctrines are more Ancient than the time you prescribe; and also that the major part of the Bishops, and Clergy of the Church of *England*, held these Doctrines which you so much condemn, long before those Court Bishops or Divines you mention, meddled with this Controversy; and I suppose we may as well quote such a Convocation Book, as a Testimony of their Sense upon these Subjects, as we do the *French*, *Helvetian*, or any other Protestant Churches Confessions of Faith, drawn up and passed in Synod of their Divines, tho' without any Confirmation of the Civil Power.

F. If you urge this Convocation Book only as a Testimony, and not Authority, I shall not contend any farther about it: But then let me tell you, that if the Canons or Decrees of a Convocation, tho' never so much confirmed by King and Parliament, do no farther oblige in Conscience, than as they are agreeable to the Doctrine of the Holy Scriptures; sure their Determinations without any such Authority, can only be look'd upon as the Opinions of so many particular private Men. And tho' I have a very great Reverence for the Judgments of so many Learned Men; yet granting those Doctrines you mention to be contained in this Book, I think notwithstanding, that we may justly examine them according to the Rules of Reason, and express Testimonies of Scripture, by either of which, when I see you can convince me of the falshood of my Tenets, I

shall

shall count myself happy to be better informed. But as for those Treatises of Bishop *Usher*, and Bishop *Sanderfon*, which you now mention'd, I must needs confess they are learnedly and elaborately written: And tho' I am against Rebellion as much as any Man, and do believe that Subjects may too often be guilty of it; yet am I not therefore convinced, *That it is absolutely unlawful in all cases whatsoever, even in the most Absolute and Arbitrary sort of Civil Government, for the People, when violently and intolerably oppress'd, to take up Arms and resist such unjust violence, or to join with any Foreign Prince, who will be so generous as to take upon him their Deliverance.* So that though I freely acknowledge that those good Bishops you mention were very Pious and Learned Men, and that I bear great Reverence to their Memories; yet doth it not therefore follow, that I must own them to be infallible, or as great Politicians as they were Learned Divines; or that they understood the Laws of *England*, as well as they did the Fathers. And perhaps there may be a great deal more said on their Behalfs than can be for divers others, who have since written and preach'd so much upon those Subjects; for if you please to consider the Times of their writing those Treatises, you will find them written about the beginning or middle of the late Civil Wars, which they suppos'd to be begun and carried on contrary to all Law and Justice, under the pretended Authority of the two Houses of Parliament against King *Charles* the First; and therefore it is no wonder if they thought themselves obliged to write very high for the Perogatives and Rights of Princes, and the absolute Obedience of Subjects, when they saw even the King's just and lawful Perogatives in danger to be taken from him by force. And altho' they may perhaps stretch several of these Points too far, yet this may be very excusable; since it is a hard matter to write so exactly against any Error as not to fall in to the contrary extream, which nevertheless may sometimes prove useful enough: As those who would set a stick streight, must bend it to the other side: And so these Doctrines which might then be seasonable, whilst the People carried on their Animosities against the King, farther than in Justice they ought, have not now the same reason and cogency, when this King hath so manifestly endeavoured to pull up the very Foundations both of our Religion and Government. So that I am persuaded, could those good Bishops have lived by the course of Nature to our Times, and have seen the ill and fatal use hath been made of those Doctrines by those in Power, they would either absolutely have renounced them, or at least have been very cautious how they publish'd such doubtful Opinions to the World.

M. I must beg your pardon, Sir, if I am not of your Opinion, for I look upon the absolute subjection of the Subjects to the higher or supreme Powers, to be a thing of such constant and eternal Obligation, that no change of Times or Circumstances can ever dispense with us in, or discharge us from it; and I am so far from believing that those good Bishops would ever have recanted their Opinions in this particular, that had they lived until this time, I think they could not (without the Imputation of Time-servers) have forborn publickly to declare and maintain them: For sure we must not deny or lay aside true Principles, because of some inconveniencies or hardships that may thereby happen to our Religion, Persons, or Civil Liberties, since that were the ready way to give a Licence to the rankest Rebellion, and the highest disobedience to the Supreme Powers; for so the Primitive Christians might have claimed a right to rebel against the Heathen Emperors, pretending they were not bound to submit themselves unto them, because they persecuted God's Church, and put the Christians to death for no other reason than that they were such. Whereas we may plainly see *St. Peter* and *St. Paul* teach us another Lesson, and command *absolute subjection without reserve* to the higher Powers, which were then the tyrannical persecuting Emperors; and that the Primitive Christians who immediately followed the Apostles, understood them in this sense; and altho' they had sufficient strength, yet thought it unlawful to resist those Heathen Emperors under which they lived. I refer you to that vast treasure of Quotations out of the Fathers and Ancient Church Historians, collected with such Learning and Industry by the Lord Primate *Usher* in the second Treatise.

F. It is not my intention, Sir, at present, to fall into a severe examination of so many Texts of Scripture, and Quotations of Fathers, and other Authors, as are made use of by those Learned Men you lately mentioned, which require more consideration than our short time will now afford; therefore the best Method I

can propose to you, for the true stating and understanding this noble Controversy, were *first* to look into the Natural state of Mankind after the fall of *Adam*; and enquire, *First*, If God has appointed any kind of Government by *Divine Institution* before another. *Secondly*, If he has not; how far Civil Power may be look'd upon as from God, and in what sense as derived from the People. *Thirdly*, Whether Resistance by the Subjects in some Cases be incompatible and absolutely destructive to all Civil Government whatsoever. *Fourthly*, Whether such Resistance be absolutely contrary to the Doctrine of Christ contain'd in the Scriptures, and that of the Primitive Church pursuant thereunto. *Fifthly*, Whether such Resistance be contrary to the Constitution of this Government, and the express Laws of the Land. *Sixthly*, Whether what has been done by the Prince of *Orange*, and those of the Nobility, Gentry, &c. in pursuance of these Principles, has been done according to the Law of Nature, the Scriptures, and Ancient Constitutions of this Kingdom; which material Points if we can once settle, and discover where the Truth lies, it will prove the clearest Comment and best Interpretation of all those places of Scripture, and Quotations of Fathers, and other Authors which are cited by Divines or other Writers, for the Doctrines of the *Divine Institution* of *Monarchy*, and the absolute Subjection of Subjects without any Resistance. For when we have once discover'd what the Law of Nature or right Reason dictates; I think we may rest satisfy'd that that is the true Sense of the Scripture: God not having given us any Precept or Command, in Moral; or Practical things, that can be contrary to the Law of Nature or Reason; or incompatible with the happiness and welfare of Mankind in this Life; as the reveal'd Will of God does chiefly regard that which is to come.

M. I do very well approve of your Proposal; and therefore pray give me first your Opinion on those Heads, that I may see how far I may agree with you, and wherein I must differ from you; for I do assure you my Intention is not to argue with you merely for disputes sake, but that we may correct the Errors of each others Understanding, and discover, if it be possible, where the Truth lies: Therefore pray, Sir, begin *first* with the Natural state of Mankind; but remember to do it like a Christian, and one that believes that we are all deriv'd from one *first Parent*, and that we did not at first spring up out of the Earth like Mushrooms, or as the Men whom *Ovid* feigns to have been produc'd of the Dragons Teeth *Cadmus* is feign'd to have sown, who, as soon as they sprung out of the Earth, immediately fell a fighting and killing each other.

F. I thank you, Sir, for your honest and kind Advice; and shall therefore in the *first place* suppose, that the Necessity as well as Being of all Civil Government proceeded from the Fall of *Adam*; since if that had not been, we had still liv'd, as the Poets fancy Men did under the Golden Age, without any need of Kings or Commonwealths to make Laws against Oppression, Theft, Adultery, Murder, and those other Injuries which Men are now too apt in this lapsed corrupt State to commit against each other; much less would there have been any need of Judges or Executioners, either to sentence or punish Offenders; for if Man had continued as free from Sin as he was in Paradise, there could have been no need of a Supreme Coercive Power, since every Man would have perform'd his Duty towards God and his Neighbour without any punishment or constraint. So that all the Authority that can be suppos'd could have been then necessary for the good and happiness of Mankind, would have been no more than Directive, as that of the Husband over his Wife; or Imperative, as that of Parents over their Children; the former of which would not have been an Absolute Coercive Power neither, but rather such a Power as his Understanding then had over the inferiour Faculties of his Soul, join'd with a *voluntary Submission of her Will to his*; the Coercive Power of the Husband, and his more extensive Rule over her, being conferr'd by God on *Adam*, and in him on all his Posterity after the Fall, for the regulating and restraining the unreasonable Desires and Passions of the Woman, which then began to exert and shew themselves in her: And as for paternal Authority, that would have been so far from being Coercive, that Children having no Inclination to disorder, either in their Wills, Appetites or Passions, there would have been so little need of Punishments, that they would not have required so much as Reproof or Correction; God having first planted the Laws of Nature or Reason in every Man's Breast free from rebellious Motions against it; so that Children then could have had no more to do, than to pay their Parents all that Gratitude, Duty and Obe-

Obedience which was due to them as the subordinate Causes of their Being, which could only consist in performing those indifferent things, which they then would have had occasion to command them; since Mankind being immortal, and the Earth bringing forth of it self all Necessaries for Human Life, there could have been no occasion of attending and relieving their Parents, when sick, old, or decrepid, and unable to keep themselves; and so likewise upon the same grounds all other Men would have been equal by Nature, in respect of any Civil Difference; for when there was no necessity of Men's Service, there would have been no Distinction between Master and Servant.

But after the Fall the State of Mankind was altered, and Self-love, and the Desire of Self-preservation, grew so strong and exorbitant above all natural Equity, that the inordinate Passions of Men blinding their Reasons, they began to think they had a Right not only to the Necessaries of Life, but to whatever their unruly Appetites desired, or that they thought they could make themselves Masters of. To remedy which Inconveniencies, I suppose, the Fathers and Masters of Families, and other Freemen (in whom alone then resided that little Government that then was in the World) were forced, after some time, to agree upon one or more Men, into whose hands they might resign all their particular Powers, and to make Laws for the due governing and restraining those disorderly Appetites and Passions, and also endowing them with a sufficient Authority to put them in execution. But which of the Governments now extant, or that have been formerly, were prior in Nature, I think cannot well be known; whether it was a Monarchy, or an Aristocracy, consisting of all the Heads or Fathers of Families, or Freemen, is not material, since the S.S. are silent in it: But it being sufficient to suppose, that it was at first begun by the Persuasion or Mediation of some one or more wise and virtuous Persons, and was consented to by the whole Number, consisting of many Families, who were sensible of those great Inconveniencies and Mischiefs they lay under for want of Civil Government. But be it which way it will, 'tis most certain that it was *principally intended by God for the Good and Preservation of the Governed, and not for the Greatness or Advantage of the Person or Persons appointed to govern*; since God designed all Civil Government for the restraining of Man's inordinate Passions and Lusts after the Fall, and procuring, by sufficient Rewards and Punishments, that Peace and Happiness, which could now no longer be obtained by Men's natural Inclinations to that which was equitable and honest. And besides, it is absolutely impossible to suppose, that any great Number of People, not pressed by the Invasion of a powerful Enemy from abroad (which could not be supposed in this early Age of the World) would ever be brought to consent to put themselves under the absolute Power of others, but for their own greater Good and Preservation, or to part with their natural Liberty, without advantaging themselves at all by the Change.

M. I will not take upon me to assert after what manner Mankind would have been governed, in case our first Parents had continued in their primitive State of Innocency. But this much I think I may boldly affirm in opposition to what you have already said, that Civil Government, after the Fall, was not alike in all the Fathers and Masters of Families; but that *Adam* alone was by God endued with it, as the great Father and Monarch of Mankind: So that not only Civil Power, *R.F. A. MM. in genere*, but *in specie*, (*viz.*) Monarchical, was immediately after the Creation *p. 254, 255.* conferred by God upon him. And *Adam* was Monarch of the whole World, even before he had any Subjects.

F. Sir, not to interrupt you, it seems somewhat hard to conceive how *Adam* could be a Father before he had Children, or a Monarch before he had Subjects.

M. If you please to consider it, you will find no Absurdity at all in this Assertion. For though I confess there could be no actual Government without Sub- *Ibid.* jects, nor Fatherhood without Sons; yet by the Right of Nature it was due to *Adam* to be Governour of the World, when as yet he had neither Sons nor Subjects: So tho' not in Act, yet at least in Habit, or *in Potentia* (as they say in the Schools) *Adam* was a King, and a Father, from his Creation, and even in the State of Innocency, he had been Governour over his Wife and Children. For the Integrity or Excellency of the Subject doth not take away the Order or Eminency of the Governour: For *Eve* was subject to *Adam* before he sinned; and the Angels, who are of a most pure Nature, and cannot sin, are yet Subjects to God, and perform all his Commands. Which will serve to confute what you say in dero-
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gation of Civil Government, or Power, that it was introduc'd by Sin, or the Fall of Man. Government, I grant, as to coactive Power, was not till after Sin, because Coaction supposeth some Disorder, which was not in the State of Innocency; but as for directive Government, the State of Humane Nature requires it; since Civil Society cannot be imagined without a Power of Government. For altho' as long as Men continued in the State of Innocency, they might not need the Direction of *Adam* in those things that were necessarily and morally to be done; yet things indifferent, that depended meerly on their Free-will, might well be directed by *Adam's* sole Command.

F. Pray, Sir, give me leave to settle this Point between us, before you proceed farther; and I doubt not, when you better consider what I say, you will not think we have any just Occasion to differ. So far then you and I are agreed, that even before the Fall *Adam* was superior over his Wife and Children, and that they owed him not only Gratitude and Respect as a Parent, but also Obedience in all indifferent things: Yet I deny that this Power or Superiority of *Adam* over his Wife and Children was at all a Despotical or Civil Power, but meerly Oeconomical, for the Good and Convenience of *Adam*, and the well ordering and Preservation of his Family; which you will easily grant, if you please to consider what are the essential Differences of Civil Government from Oeconomical. Now the essential Properties of Civil Government consist in preserving and defending the Subjects, both in War and Peace, from foreign Enemies, and intestine Injuries, and Invasions of Men's Persons or Properties, and in revenging and punishing all such Transgressions by Death, or other Punishments, and consequently in making Laws concerning Property, and for restraining all Robberies, Murders, and the like. Now, in the State of Innocency, there could be no need of any of these essential Functions of Civil Power: for your self must grant, that Man was then not apt to sin, and also immortal; so that all Laws about Peace or War, Punishments of Offences, publick Judgments concerning *Meum* and *Tuum*, and all Injuries, were absolutely needless, and had never been in Nature, if *Adam* had not sinned; and then how you can call this Authority, or Superiority (which I grant *Adam* had over his Wife and Children) Civil Power, I can by no means understand.

But I do utterly deny, that even after the Fall *Adam* was a Monarch, or *Sole* and *Absolute Lord* over the whole Earth, and all Creatures therein contained; and desire you to give me such plain Proofs of it, either from Reason or Scripture, that I need no more doubt of it, than your self.

M. I shall, first of all, give you an Argument drawn from the Reason of the thing; and in the next place, the Authority of Scripture, for my Opinion: And first, I think it is evident, that every Man that is born is so far from being free, that by his very Birth he becomes a Subject of him that begets him; and even *Grotius* himself acknowledges, that *Generatione Jus acquiritur in Liberos*. And indeed the Act of Begetting being that which makes a Man a Father, his Right of a Father over his Children can naturally arise from nothing else. And the same Author in another place hath these Words upon the Fourth Commandment: *Parentum nomine, qui naturales sunt Magistratus, etiam alios Rectores par est intelligi, quorum autoritas Societatem humanam continet*: And if Parents be natural Magistrates, Children must needs be born natural Subjects. So that not only *Adam*, but the succeeding Patriarchs had, by Right of Fatherhood, Regal Authority over their Children, as may appear by divers Testimonies out of Scripture; and therefore it is very reasonable, that all Fathers should have a Power over the Lives of their Children, since it is to them that they owe their Life, Being and Education: And I think that even the Power, which God himself exerciseth over Mankind, is by Right of Fatherhood.

F. Before you come to Scripture, give me leave, in the first place, to examine your first Argument, which you deduced from the Law of Nature, or Reason: For I doubt, if you please better to consider of it, you will find, that so light and transitory an Action, as that of Generation, cannot give any Man an absolute Property and Dominion over the Person and Life of those whom he begets; since few Men do principally intend the giving of a Being to another, so much as they do their own Pleasure, in that Action. Nor do we owe our Lives, properly speaking, to our Parents, but to God, who is the true and original Cause of our Being; tho' it is true he makes use of our Parents as physical, tho' not as moral Means or Instruments

ments for that end ; since it doth not lie in their power to hinder the generating of Children, if they perform the Acts necessary thereunto. So that both the Antecedent and the Consequent are altogether false, viz. That Parents give their Children Life and Being, and that therefore they have an absolute Power over their Lives and Persons : Which, if it were true, would give the Mother an equal Title to the Lives of the Children, as the Father ; seeing they owe their Lives as much to the one as the other : Which Power in the Mother I am sure you will not admit of. But as for what you say concerning the Power of Fathers, arising from Education ; tho', I confess, that is a much better Title than the other ; yet doth it not follow, that, because by reason of my Parents Care of me, before I was able to help my self, I owe my Preservation and Well-being to them, that therefore they are to be perpetual and absolute Lords over my Person and Life ; since, by thus breeding me up, they only performed that Duty and Trust, which God had laid upon them, for the Good and Preservation of Mankind, and which they could not, without committing a Sin, either refuse or decline ; and therefore their Authority or Power over my Person, being only for my Well-being, can extend no farther than whilst I am not of Years of Discretion to understand the true Means of my own Good and Preservation : And tho' I grant, that I am bound in Gratitude to return this Care and Kindness by all Acts of Duty and Piety towards them, as long as I live ; yet doth it not therefore follow, that they are Masters of my Life, and of all that I have ; since this were to take away more than they themselves ever gave. And tho' I should grant you, that even the Power, which God himself exerciseth over Mankind, is by Right of Fatherhood or Creation ; yet this Fatherhood is such, as utterly excludes all Pretence of Title in earthly Parents : For he is our King, because he is indeed the Maker of us all, which no natural Parents can pretend to be of their Children. But if you please more closely to consider your own Argument, you will find that it will quite destroy your Hypothesis. For if all Fathers have an absolute Power over their Children by Generation, then *Adam* could only have Power over his own Children which he begat, and none at all over his Grand-children ; since their Fathers, by this Argument of Generation, ought to have had the same Power over their Children, which *Adam* had over them, for the same Reason. So that this Monarchical Power of *Adam*, as a Father, could extend no farther than one Generation at the most. T. T. G. c. 5. p. 69.

M. I shall not further urge this Argument of Generation, since I see you are not satisfied with it ; but this much I think I can clearly prove from Scripture, that *Adam* was Lord over the Persons and Lives of his Wife and Children, by virtue of that Command which God gave *Eve*, Gen 3. 16. *Unto the Woman he said, I will greatly multiply thy Sorrow and thy Conception : In sorrow thou shalt bring forth Children, and thy Desire shall be to thy Husband, and he shall rule over thee.* From which Words it appears, that *Adam* had not only an absolute Power granted him by God over his Wife, but all the Posterity that should be born of her. For, in the first place, it here seems that *Eve* was to yield an absolute Subjection to her Husband, who was to rule over her as her Lord, from these Words, *and thy Desire shall be [subject] to thy Husband*, (as it is better express'd in the Margin) *and he shall rule over thee.* And if his Wife was thus to be subject to him, then likewise by a Parity of Reason all her Children were to be so too ; it being a Maxim in the Law of Nature, as well as in the Civil Law, that *Partus sequitur ventrem* : So that if *Eve* was to be absolutely subject to *Adam*, the Issue by her must be so too ; as in the case of a *Master of a She-slave*, not only the Person of the Woman, but all that are begotten of her, either by her Master or any other Man, are likewise his Servants ; otherwise the Children would be in a better condition than their Mother ; for *Adam* having no Superior but God, both his Wife and Children must have been alike subject to him. There is likewise another Rule in the Civil Law, which is a Voice of Nature too, *Quicquid ex me & uxore mea nascitur, in potestate mea est* : And tho' this is true in some sense in all Fathers whatsoever ; yet it was so in a more superlative degree, where the Father had no Superior over him but God, as *Adam* had not. And farther, it seems apparent to me, from the very Method that God us'd in creating Mankind, that *Adam's* Wife and Children should be subject to him : For if *Adam* and *Eve* had been created at once, it could not have been known which of these two had the best Right to command, and which was to obey. For *Adam's* Strength, or Wit alone, would not have given B. P. P. s. 31. lb. s. 32. lb. s. 20, 21.

given him any Authority over her ; and it might be that *Eve* was as strong and as wife as he, or at least she might have thought her self so ; and if these two had differ'd and fought, nought but the Event could have declared which of them should have been Master.

So when they had Children born between them, the Children could have told as little which of the Parents they should have obey'd, in case they had differ'd in their Commands : So that it had been impossible this way that any Government could have been in the World. But when God created only one Man, and out of him one Woman was made, sure he had some great Design in this ; for no other Creature was thus made at twice, but Man. Now *St. Paul* shews a Reason for God's acting thus, when he says, the Woman should not teach, nor usurp Authority over the Man, &c. And mark the Reason : *For Adam was created, and then Eve*. So that, in the Apostle's Judgment, this was one main Cause why *Adam* should be superior to his Wife, and all other Husbands to their Wives. And in the *Corinthians*, from the History of the Creation, the same Apostle deduces two other Reasons for the Superiority of the Man over the Woman : *For (says he) the Man is not of the Woman, but the Woman of the Man ; (that is, Eve was formed out of Adam) neither was the Man created for the Woman, but the Woman for the Man*. So that you see here is *Adam* stated in a degree of Superiority over his Wife before the Fall ; and immediately after it, God again renew'd *Adam's* Title, when he told *Eve* (as I have but now mention'd) *thy Desire shall be subject to thy Husband, and he shall rule over thee*. Now I so far agree with what you at first laid down, that if the Fall had not disorder'd her Faculties, and render'd her apt and prone to disobey her Husband, this Command need not have been given her ; but she would have known her Duty from the Order and End of the Creation, without this explicate positive Command.

F. You have, Sir, taken a great deal of pains to prove that which I do not at all deny, that as well before as after the Fall, *Adam*, (and consequently all other Husbands and Fathers) ought to be superior to their Wives and Children, and likewise govern and command them in all things relating to their own Good, and that of the Family, as long as they continue Members of it ; nay, that Children, after they are separated from their Father's Family, still owe their Parents all the Gratitude, Duty, and Respect imaginable : But yet I deny that this Power, which *Adam* had over *Eve*, and his Issue by her, and all other Husbands have over their Wives and Children, is a regal despotical Power, or any more than conjugal in respect of his Wife, and paternal in respect of the Children ; nor is that filial Reverence and Obedience, which Children yield their Fathers, the same with that Respect and Duty, which a Wife owes her Husband, or the same with that servile Subjection, which Slaves owe their Lord and Master ; neither is the Duty of a Wife of the same kind with that which Sons pay their Fathers, or Slaves their Lords ; nor did *Sarah*, when she called *Abraham* Lord (who was then Master of a separate Family, and so subject to none) ever suppose that her Husband had the same Authority over her, as he had over *Hagar* her Bondwoman, to sell her, or turn her out of doors at his pleasure. But to make it more apparent to you, that this Power granted to *Adam* over *Eve*, was not regal nor despotical, but only conjugal, and for the well ordering of the Family, where some one must command in chief, and the rest obey, to avoid Confusion, will appear, first, if you consider that this Subjection of *Eve* to *Adam* was not enjoin'd till after the Fall, and is part of God's Judgments denounc'd against her, for tempting her Husband to eat the forbidden Fruit, and certainly included somewhat more than that Superiority which he had over her by his Creation, or else God should not have made it any part of the Judgment denounc'd upon her. If this Submission she ow'd to her Husband before the Fall, had been of the same nature with that Subjection she was to be under after it ; which yet I take to be neither servile nor absolute, but only a conjugal Obedience or Submission of her Will to his, in all things relating to the Government of the Family, and the Carriage of her self ; tho' I do not deny but the Husband may sometimes restrain her by force, in case she carries her self unchastly, or indiscreetly, to the loss of her Reputation, and Prejudice of his Interest, when she will not be directed, or advis'd by his Persuasion, or Commands, which before the Fall, when she was in a State of Innocency, there was no need of ; since (as your self grant) before the Fall she knew what was her Duty, and performed it without any force or constraint, &c. And therefore that

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Text, which you have now quoted out of *Genesis*, *Thy Desire shall be* [subject] *to thy Husband, and he shall rule over thee*, is not fairly cited : For, as for the marginal Addition, viz. [subject] *to thy Husband*, it is not warranted from the *Hebrew* Original, or Version of the LXX ; the *Hebrew* having no more than (*thy Desire shall be to thy Husband*) which the LXX renders *ἀποστροφή*, i. e. the Conversion or Inclination of the Desire, by which some Interpreters understand no more than the carnal Appetite. So likewise from the Words [rule over thee] they likewise observe, that *Moses* makes use of the same *Hebrew* Word, when he makes mention of the Sun and Moon ruling the Day and Night, tho' they do not do it by any Violence, or corporeal Force : So likewise, by this ruling of the Husband, is not to be understood any absolute, despotick Power, whereby he hath a Right to dispose of the Person and Actions of his Wife in all things at his pleasure ; but that she may in many cases refuse, nay controul his Commands, and resist his Actions, in case they prove unlawful, or destructive to her self and Children.

But that this Argument of *St. Paul*, of the Husband's Superiority over his Wife, was not granted to *Adam* alone, but equally extends to all Husbands whatsoever, appears from the very Text it self ; or otherwise *St. Paul* had argu'd very impertinently of the Duty of all Wives : And if so, it will follow that every one of *Adam's* Sons, as soon as he took a Wife, had the like Authority over her, as *Adam* had over their Mother : And if over their Wives, then, by your Maxims (of *Partus sequitur ventrem*, & *quicquid ex me & uxore mea nascitur, in potestate mea est*) all the Sons of *Adam* must have had the same Power over their Children, as their Father had over them. So that the same Consequence will still follow from these Places of Scripture, and also from your Civil Law Maxims, that either *Adam* had no Civil or Despotick Power over his Wife and Children ; or else, if he had, that every one of his Sons, when married and separated from his Father's Family, had the same, and consequently there were as many Princes as distinct Masters of Families ; and then what would become of *Adam's* Monarchy, I give you leave to judge.

M. I must beg your Pardon, if I am not satisfied with your Answer to my last Argument : For I am still of opinion, notwithstanding what you have said, that *Eve* was to yield an absolute Subjection to her Husband, from that Place already cited, *That her* (viz. *Eve's*) *Desire* (i. e. Will) *should be subject to her Husband, &c.* To which you answer, that this Subjection of *Eve* to *Adam* was not the same which Sons owe their Fathers, or Slaves to their Lords ; and that *Eve* owed *Adam* not a filial, or servile, but a conjugal Subjection. For I would fain know the difference, in the State of Nature, between one and the other : For if you please to compare that Place of *Genesis*, I but now quoted, with that other ^{B.P.P. 5. 27, 28.} where God gives *Cain* Power over *Abel*, his younger Brother ; you will find them the same in Words, as also in Sense. For in this God likewise tells *Cain*, *That unto thee shall his Desire be subject, and thou shalt rule over him.* And sure God could ^{Gen. 4. 7.} not intend by these Words, that *Abel* should yield a conjugal, but a filial Subjection to his elder Brother ; and these Words are not capable of two Senses, but must be understood alike in both Places (i. e.) That the Desire (which is a Faculty of the Soul, and that the most active too) was to be subject, and the Body, and all the Powers of it, were to be over-ruled by him ; which is as full and absolute a Subjection as can be express'd in Words. And whereas you say, that these Words were not spoken till after the Fall, and thence seem to infer, that *Eve* did not owe *Adam* so much as a conjugal Subjection before that ; *St. Paul* hath given you an Answer to that already, which it is needless to repeat ; and therefore, upon the whole matter, I think your Distinction of a conjugal Subjection different from a filial or servile one, will signify nothing.

F. I doubt not, Sir, but I shall be able to make good this Distinction of a servile and a filial Obedience ; and in order to it, shall reply to the Consequence you have made, for *Eve's* absolute Subjection to *Adam*, from the like Expression used by God to *Cain* concerning his ruling over his Brother *Abel*, as is us'd here to *Eve* concerning her Subjection to her Husband ; and that because the Subjection of *Abel* was absolute, that therefore her Subjection must be so too. I must crave your Pardon if I deny you Assumption ; for I think I am able to prove, that neither *Abel*, nor any other younger Brother, was, or is obliged, by virtue of this Text, to yield an absolute Obedience to his elder Brother, in the State of Nature, or that he is therefore his Lord and Master. Nor can I see any Absurdity, but that the same Words might be spoken to several Persons, yet in different Senses,

Senses, which, according to the Nature of the Persons to whom they were spoken, might have different Effects. As here these Words, when spoken to *Eve*, enjoin a conjugal Submission of *Eve's* Will to *Adam* as her Husband; but when spoken to *Abel*, they may signifie a fraternal Submission of *Abel's* Will to *Cain's*, as the elder, and perhaps the wiser of the two, but without giving any absolute or despotick Power over either.

M. I cannot be yet satisfied with your Reply; for methinks this is but to trifle with God's Word, when he told *Cain*, thy Brother's desire shall be subject to thee, that is, (*say you*) *Thou shalt rule over him only as far as he thinks fit*; or if thou hast the knack to wheedle or persuade him. Was not this a mighty Matter for God Almighty to appear to *Cain* about? An excellent and rational way to appease his Wrath towards his Brother? Whereas God here plainly enjoineeth a Subjection from *Abel* to his elder Brother; and if so, by vertue of the same Words, a like Subjection of *Eve* to *Adam*; and then it will likewise follow, that as the Streams are of the same Nature with the Fountain, the Subjection of all her Posterity will likewise be included in hers, which I have sufficiently proved already, had you not mistaken the true Sense of those two Maxims I laid down. For first, if *Partus sequitur ventrem*, and the Mother be a Subject, as *Eve* was, all her Posterity must be so to all Generations. And if *Quicquid ex me & uxore mea nascitur, in potestate mea est*, be true, then *Adam's* Grand-children, and great Grand-children, deriving themselves from him and *Eve*, must be likewise under *Adam's* Power. Nor can I see how his Sons, or Grand-children, by setting up separate Families, could ever discharge themselves from this absolute Subjection to *Adam*, since they could never have quitted his Family without his Consent; and when they did quit it, unless he pleased to manumit them, they, their Wives and Children were still as much subject as they were before. Since I do not see, if they were once Subjects to him, how any thing but his expresse Will and Consent could ever discharge them from it. Nor was that Authority (which every one of these Sons of *Adam* might exercise over their Wives and Children, though they were not freed from the Power of their Father) any more inconsistent with that Subjection and Obedience they owed him, as their Prince, than in an absolute Monarchy, the Power of Fathers and Husbands over their Wives and Children, as to the things relating to the well-ordering and governing their Families, is inconsistent with that supreme predominant Power which the Monarch hath over the Father himself, and all his Family; or than the Power of a Master of a Family, in the Isle of *Barbadoes*, over his Slaves that are married, and have Children, is inconsistent with that Marital and Paternal Power which such a Slave may exercise over his Wife and Children within his own Family, tho' still subordinate to the Will of the Master, who may forbid any such Slaves, or their Children to marry, but where he hath a mind they should; and may likewise hinder them from correcting or putting to Death their Wives and Children without his Consent. Though such Subjects in an absolute Monarchy, or Slaves in a Plantation, cannot have, or enjoy any Property in Lands or Goods but at the Monarch's, or Master's Will. And so likewise at first none of these Sons of *Adam*, though they set up distinct Families from their Fathers, could enjoy, or enclose any part of the Earth without his Grant or Assignment, to whom the whole was given by God before.

It seems likewise to be a great Mistake, when you at first affirmed, that all Civil Government was ordained by God, *for the Benefit and Advantage of the Subjects, rather than the Governours*. Whereas from the first and most Natural Government it appears, that Children, who were the Subjects, were ordained as much for the benefit and help of their Parents, who were the first Monarchs, as their Parents for them. From all which we may draw these Conclusions: First, That from *Gen. 3. v. 6.* already cited, we have the Original Charter of Government, and the Fountain of all Civil Power derived from *Adam* as the Father of all Mankind. So that not only the Constitution of Power in general, but the special Limitation of it to one kind, (*viz.*) Monarchy, and the Determination of it to the individual Person of *Adam*, are all Ordinances of God. Neither had *Eve*, or her Children, any Right to limit *Adam's* Power, or join themselves with him in the Government. Now if this Supreme Power was settled, and founded by God himself in Fatherhood, how is it possible for the People to have any Right to alter, or dispose of it otherwise? it being God's Ordinance that this Supremacy should be unlimited in *Adam*, and as large as any Acts of his

his Will. So that he was not only a Father, but a King, and absolute Lord F. P. O. A. over his Family ; a Son, a Subject, and a Servant, or Slave, being one and the same thing at first ; the Father having Power to dispose of or sell his Children or Servants at his pleasure : And tho' perhaps he might deal too severely or cruelly in so doing, yet there was none above him, except God, in the State of Nature, who could call him to an account, much less resist or punish him for so doing.

F. You have, Sir, made a very long Speech upon the Monarchical Power of *Adam*, which you have made of so large an extent, that this imaginary Kingship must swallow up all the other more dear and tender Relations both of a Husband, and of a Father. So that were I not satisfied you were a very good natured Man, and spoke more the Sense of others than from your own natural Inclinations, I should be apt to believe, that if you had sufficient Power, you would prove as great a Tyrant over your Wife, Children, and all that should be under your Command, as such Arbitrary Tenets would give you leave : But since, I hope, your Error lies rather in your Understanding, than in your Nature ; I shall make bold to shew you the Mistakes you have committed in those Principles you here lay down. I might first begin with the Place of Scripture you farther insist upon, for *Eve's* absolute Subjection to *Adam* from the like Expression used by God to *Cain* concerning his ruling over his Brother *Abel*, as is us'd here to *Eve* : And though you are pleased to think my Exposition of this Place so ridiculous, yet I doubt not but to be able to prove, when I come to speak of this pretended Divine Authority of elder Brothers over the younger, that this Place cannot be understood in any such Sense, according to the best Interpretation that both the Reason of the Subject, and the Sense the best Commentators put upon it can allow : But I shall defer this 'till we come to discourse concerning the Successors of *Adam* in this Monarchical Power you suppose. And therefore I shall only at present pursue that absolute Power, which you suppose *Adam* to have had, not only over *Eve*, but all her Descendants. For indeed your Argument of *Eve's*, and consequently all her Children's absolute Subjection to *Adam*, depends upon a very false Supposition. Since if the Subjection of *Eve* to *Adam*, and of all Wives to their Husbands is not servile or absolute, neither can that of the Children be so ; since, according to your own Simile, if the Streams are of the same Nature of the Fountain, they can never rise higher than it : And tho' I grant, *Adam* might in some cases have put his Wife or Children to Death, for any enormous Crime against the Law of Nature ; yet I allow him that Power, not as a Husband or Father, but only as a Lord or Master of a separate Family, who having no Superior in the State of Nature, I grant, is endued by God with this Prerogative, for the Good of his Family, and Preservation of Mankind, lest such horrid Crimes, so much to its prejudice, should pass unpunish'd. But that the Husband, or Father, doth not act thus in either of these two Capacities, I can easily prove.

First, Because the Scripture tells us the Husband and Wife are one Flesh, Gen. 2. 24. and that no Man ever yet hated his own Flesh ; so that it is impossible for a Husband to put his Wife to Death, 'till by the Greatness of her Crimes she be- Ephes. 5, 29. comes no longer worthy of that tender Affection he ought to bear her. Then as to the Father, he, as a Father, ought not to desire to put his Son to Death, whose Being he hath been the cause of, and who is principally made out of his own Substance, and on whom he hath bestowed Nourishment and Education for so many Years, until he finds that instead of a Son he proves an Enemy to his Family ; or hath so laid wait against his Life, that as long as he lives he cannot be safe ; or else commits some of those heinous Crimes, which, by the Laws of God and Nature, do justly deserve no less Punishment than Death ; in short, when he ceases any longer to deserve the Name of a Son. 30.

Yet this Authority holds no longer than whilst the Son remains part of his Father's Family, and so subject to his Power : And this I take to be the reason why we do not read, that *Adam* took any notice of *Cain's* murdering his Brother, because he was before freed from his Power, by setting up another Family, which certainly had been *Adam's* Duty to have done, had he been then under his Jurisdiction ; Murder being as great a Crime before the Flood as after, though the Punishment of it by Death were not positively enjoin'd by God 'till then. Gen. 9. 5. But I shall prove this point more particularly by and by, as also that *Adam's* Children might enjoy, or enclose some part of the Earth without any Grant or Assent

Assent from *Adam*, to whom you suppose (though without any Proof as yet) that the whole Earth was given by God.

To conclude, I doubt you mistook me when you say, I at first affirmed, that all Civil Government was ordained by God, for the Benefit or Advantage of the Subjects, rather than that of the Governours; and therefore you undertake to shew me, that in the first and most natural Government, *viz.* that of a Family, *Children, who are Subjects in the State of Nature, are ordained as much for the Benefit and Help of their Parents, who are their Princes or Masters, as their Parents for them;* in which Assertion you fall into more than one Mistake; for I do not assert, that in Civil Government the Benefit or Advantage of the Subject is only to be considered: For I shall easily grant, that Princes may very well challenge a very great share in the Honour and other Advantages that may be reap'd by their Government; and yet for all that, when the Happiness and Preservation of the Subjects is incompatible with that of the Prince, the former is to be preferr'd; and Bishop *Sanderfon* is of this Opinion, when he tells us in his Lectures * *De Juramento, That the end of Civil Government, and the Obedience that is due to it, is the Safety and Tranquility of Humane Society;* and therefore the end is certainly to be preferred before the means, when they cannot both consist together. But this is no Argument for the preferring the Benefit or Advantages of Parents before that of their Children, since Paternal is not Civil Government: Nor are Fathers absolute Princes or Masters over their Children, as you suppose; and yet I think I may safely affirm, that even in this Paternal Government, though it be granted that Children are ordained for the Benefit, or Help of their Parents; yet when their Happiness and Preservation is inconsistent with that of their Children, it may be a great doubt which is to be preferr'd, since God's chief Intention in Parents was for the Preservation and Propagation of Mankind; and therefore I cannot see how it could ever be any part of the Paternal Power, for a Father to make his Child a Slave, or to sell him to others at his pleasure, as you suppose; this being no part or end of the Design or Duty to a Father.

And whereas you lay to my charge my mistaking the true Sense of those Civil Law Maxims you have quoted; I think I can easily prove, that the Mistake lies on your side, and that you have misapplied them, to make them serve your purpose: for as to your first Maxim, *Pavus sequitur Ventrem*, from which you infer, that the Child ought to be of the same condition with the Mother, this Rule in your Civil Law relates only to Bastards, and not Legitimate Children, who follow the condition of the Father according to your Digest: *Qui ex uxore mea nascitur, filius mariti est habendus;* so likewise in your Code, *Cum legitima nuptiæ factæ sunt, patrem liberi sequuntur, vulgo quæritur matrem sequitur.* Nor is your second Maxim more true; for though I grant, according to your Roman Law, the Father might have absolute Power over his Wife and Children; yet I cannot see how this word, *nascitur*, can be extended beyond those that are born of a Man and his Wife, and therefore can never concern Grand-children much less any more remote Descendants; and this very Law, that a Son or Daughter might be killed by a Father, seem'd so cruel and odious, even to the ancient Romans themselves, that neither the Law of the twelve Tables, nor the Julian Law of Adulteries, which were provided against Fathers, Sons, and Daughters, ever extended it to the Grand-father, Grand-son, or Grand-daughter by Interpretation; or Argument *a casu consimili*. Nor do these Words, *in Potestate mea est*, prove more than that all Children are born under the Power of their Parents, though whether they shall always continue so long as they live, is not to be proved from this Maxim; nor if it were, doth that make it a Law of Nature. For I must needs observe this of divers of you Civilians, that whatever Maxim you find in your Civil Law Books, that will make for your Notions, you presently adopt them for Laws of Nature, without ever enquiring by the strict Rules of Reason, and the Good of Mankind, (by which alone any Law of Nature is to be tried) whether they are so or no.

I shall not trouble my self to confute those false Conclusions you have brought from those weak Premises; for if I have destroyed your Foundation, I think your Superstructure cannot stand; and therefore you must pardon me, if I cannot find this Original Charter of Government, and of all Civil Power, to be derived from *Adam* by any Argument that yet you have brought either from

Scripture,

* *De oblig.
revel. Præf.
§. 5. 19.*

*Dig. 1. Tit.
6. L. 16.
Cod. Tit. 19.
L. 14.
Dig. Tit. 5.
L. 19.*

Scripture, or Reason ; only give me leave to observe thus much upon what you have said, *That if not only the Constitution of Civil Power* in general, but the special Limitation of it to one kind, (*viz.*) Monarchy, be the Ordinance of God, I cannot see how any other Government but that can be lawfully set up, or obeyed by Men, since no Government can challenge this Priviledge against Divine Institution.

M. Since this Hypothesis doth not please you, I shall be glad if you can shew me any better Original, either of *Adam's* Paternal Power, or of Civil Government, than this that God gave *Adam* over *Eve*, who indeed was, as at the first Subject, so the Representative of all that followed ; and it reaches not only to all her Daughters in relation to their Husbands, but to all of them in relation to their Fathers, and to her Sons too, in relation to both their Father, and their eldest Brother after his Decease, if no Body superior to both of them, and him interposed, and diverted, or rather over-ruled it. B. P. P. § 36.

For (1.) If a Priority of Being gave *Adam* a Power over his Wife, it gave him much more so over his Children.

(2.) If God's taking *Eve* out of *Adam*, the forming her of one of his Ribs without his Concurrence, did yet make her his Inferior, his Children were much more so, which were derived from him, and by his Act.

(3.) If she were formed for him, not he for her ; and that was another reason ; this extended to his Children too, who were begotten for the Comfort and Assistance of both him and her.

(4.) When God put *Eve* under the Subjection of her Husband after the Fall, her Children must needs be so too, if they were not excepted, but we read of no Exception.

(5.) Is it not an eternal Law of Nature, that all Children should be subject to their Parents ? And did not this Law spread itself over the Face of all the Earth, as Mankind increased ?

And whereas you would limit this Power of Parents over their Children, both *Ibid.* in its Extent and Duration, this is purely owing to the Civil Laws of Nations, and not to the Laws of Nature, and is different in different Places ; some having restrained the Power of Parents more, and some less. But God gave the Parents a Power of Life and Death over their own Children, amongst his own People the *Jews*, and that not limited in Duration neither, for the Father's Power over his Son was not determin'd but by his Death, though they could not execute that Power, but in the presence of a Magistrate. And I am also sure that in all the Histories and Relations I have met with, amongst civiliz'd Nations (where it is not otherwise order'd by the Civil Laws of the Country) all Husbands and Fathers have Power of Life and Death over their Wives, and Children ; and so it is at this Day amongst many Eastern Nations, and was antiently amongst the *Romans*, *Gauls*, and *Persians*, &c. Which Power I take not to have been given, or conferred on them, but rather left to them by the Civil Laws of their Country in the same State, as it was establish'd by the Law of Nature, or rather Nations. Now if such Husbands and Fathers antiently had, and still have a Power of Life and Death in divers Countries over their Wives and Children, I desire to know what higher Power they could enjoy, since he that hath power over a Man's Life, which is of the highest concern to him, may certainly command him in all things else ?

But as for your last Scruple, that you cannot see, if Monarchy be of *Divine Institution*, how any Government but that can be lawfully set up or obeyed by Men, I think it may be a satisfactory Answer, if I tell you, that if those who are born under a Monarchy can justify the Form they live under to be God's Ordinance, they are not bound to forbear their own Justification, because others cannot do the like for the Forms they live under ; let others look to the Defence of their own Government : If it cannot be proved, or shewed, that any other Form of Government had ever any lawful beginning, but was brought in, or erected by Rebellion, must therefore the lawful and just Obedience to Monarchy be denied to be the Ordinance of God ? : : 111.
: 260.

F. I hope, before I have done, to give you a clearer Original from the Law of Nature, as well of Paternal Authority, as Civil Government, without recurring to Divine Revelation, which (as I said before) would oblige none but *Jews*, and *Christians*, or *Mahometans*, whose Law is a Mixture of both the other.

In the mean time give me leave to tell you, that *Eve's* being the Representative of all Wives, did not put either herself or her Daughters into any absolute Subjection either to *Adam*, or their Husbands; if it did, then could not this Subjection be likewise owing either to *Adam*, as the Patriarch, or Grandfather of the Family, or to his eldest Son after his Decease; since this would make every Wife in the state of Nature, to have had two absolute Lords, her Husband, and her Husband's Father, which is contrary to our Saviour's Rule, that no Man can serve two Masters, that is, in the same kind of Service: And therefore it plainly makes out my distinction, that there is a great deal of difference between a Conjugal Submission of a Wife to her Husband, and a Servile Subjection of a Servant to his Lord, as also of that Obedience or Duty, which a Subject oweth his Sovereign; since by your own Hypothesis it necessarily follows, that either *Cain's* Wife (for Example) was not to be subject to her Husband, or else must be free from all Subjection to her Father *Adam*: But as for any Submission to *Cain*, as elder Brother after *Adam's* Decease, I desire to be excused meddling with it, till we have dispatch'd the Question in hand.

I come now to those fresh Considerations you bring for this Monarchical Power of *Adam*; for indeed I cannot call them new Arguments, because most of them have been answered already. The first Consideration is from the Priority of the Being, which you suppose gave *Adam* a Power over his Wife, and consequently over his Children; but I think this Priority of Being could give him no such Power at all over her, and consequently not over them; for I desire to know whether if God had been pleas'd to have Created, the same day that *Eve* was made, twenty single Men, and their Wives, that therefore *Adam* must have been, from his being first Created, Monarch over them all, unless God had particularly commanded it?

I grant indeed that from God's Creating *Eve* out of *Adam*, it did render her inferior to him, and also from God's express Command, that she was to be subject to him in all Conjugal Duties; yet did neither of these render either her, or her Children absolute or perpetual Subjects, and Slaves to *Adam*. And that their being deriv'd from him, or by his Act, doth not at all alter the Case, I have already proved.

As for the third, That if she were formed for him, and not he for her, that this must be another reason which must extend to his Children too: Here the Assumption is not only false, but the Consequence too: For she was not only formed for him, but that they might be a mutual help to each other; and therefore the Scripture tells us, *A Man shall leave his Father and his Mother, and shall cleave unto his Wife, and they two shall be one Flesh*; which Words (in my Opinion) are very far from proving any such absolute Subjection; for no Man can ever tyrannize over his own Flesh; and if such an absolute Subjection had been intended from *Eve* to *Adam*, it had been more consonant to Reason, for the Scripture to have enjoin'd her to have left her Father and Mother to cleave to her Husband. Whereas indeed there was no more meant by this Text, than that when a Man marries, he may freely quit his Father's Family, and joining himself to his Wife, may set up another of his own. But as for the Children that were begotten between them, tho' I grant they might be intended both for the Comfort and Assistance of him, and her; yet I have already proved that the Parents are more chiefly intended for their Children's Propagation, and Preservation, than the Children are for their Interest and Happiness.

Your fourth Consideration is only a supposition of the Question which is yet to be proved; that *Eve* was under an absolute Subjection to *Adam* after the Fall. I have already proved this supposition not to be true; and therefore the consequence, as to the Children, is false likewise.

Your fifth is rather an Interrogation than an Argument, whether Children ought not to be, and have not always been subject to their Parents all over the World? In answer to which, I grant that it is true, that they have ever been so, tho' not in your Sense. For I hold this Subjection neither to be servile, or absolute, not yet perpetual, as long as they live: But in reply to this limitation of the Power of Parents over their Children both in its extent and duration, you tell me, *this is purely owing to the Civil Laws of Nations, and not to the Laws of Nature*; and for a Proof of this, you produce God's own People the *Jews* for an Example, that the Power of the Father over his Son was not determined but
by

by his Death. But yourself confessed, *that he could not exercise this Power of Life and Death, but in the presence of the Magistrate*; the Circumstances of which, if they be consider'd, will rather make against you; for, first, the Father could not have this rebellious Son put to Death, till he had accused him before the Elders of the City, that is, the Judges who were establish'd in every Precinct, who, upon a solemn hearing, were to sentence such a rebellious Son to be stoned to Death by all the People of the City: Where you may observe that the Father had no Power to put him to Death himself; and therefore acted in this case, as an Accuser, or a Witness, not as a Judge. But if you'll believe *Maimonides*, one of the most Learned of the *Jewish* Rabbins, he will tell you that by the Municipal Law of the *Jews*, this Power of the Father did scarce extend beyond the thirteenth Year of the Son's Age, after which the Son was reckon'd adult, and emancipated from his Father's Power, and could not after that incur this Punishment of a stubborn and rebellious Son; and a Father who did but strike his Son after he was adult, incur'd Excommunication, for that he offended against the Law. And tho' I grant that the Nations you mention did exercise a Power of Life and Death over their Wives and Children, yet will not the Practice of some particular Nations, tho' never so much civiliz'd, amount to a Proof of a Law of Nature, which is only to be made out from evident Rules of right Reason, and the great end of this Law, *the common good of Mankind*; and especially when against the Examples of those Nations which you produce, I can likewise set those of many more Nations, where this Custom was not allowed, after once Civil Government was establish'd.

And as for the *Romans* themselves, amongst whom the greatest Examples of this kind are to be found, they will not all of them amount to above three, or four, in six or seven hundred Years; and then, tho' there might be very good cause for it, yet the People of *Rome* never so much esteemed or loved such Fathers after they had put their Sons to Death, as they did before, but counted them too severe and cruel for so doing. And you may read in *Valerius Maximus*, and *Seneca*, that they killed *Erixon*, a *Roman* Gentleman, for whipping his Son to Death like a Slave; so much did they abhor all such Cruelty of Parents towards their Children. And afterwards, when by the general Corruption of Manners amongst the *Romans*, Fathers grew more cruel to their Children, and often put them to Death without cause; those of your Faculty suppose that some of the *Roman* Emperors (tho' it is uncertain who) took away this Power from Fathers, and made it (as it is now among us) Murder, for a Father to put his Son to Death; tho' others suppose (since there are no particular Edicts to be found concerning this Matter) this Law to be changed by degrees, and to be left off by common consent of the *Romans* themselves; for it seems dangerous to grant to a private Person the Cognizance of any Crime, which might belong to publick Authority; and they thought it better to strengthen both the Paternal and Marital Power by other Laws than putting to Death. And therefore *Simplicius*, upon *Epicetus's* *Enchiridion*, says, that the *Romans* allowed Fathers this Power, because they thought they might very well trust their natural Affection to their Children, for the exercise of that Power of Selling them, or putting them to Death, which 'twas supposed they would rarely use, unless compelled by extream Necessity, or unpardonable Crimes; and therefore if a Father would put his Son to Death, he was to do it with his own Hands, that he might suffer as well as his Son; but when this tender Affection too failed, it was no wonder that the *Roman* Emperors did not think it for the common good of their People to trust Fathers with this Power any longer, which they had hitherto exercised, not so properly by right of Fatherhood, as that of the Master of a Family, who governed his Servants and his Sons by a like Authority.

To conclude, I cannot but observe, how slyly you wave my objection against the Divine Institution of Monarchy; for tho' you seem loth expressly to condemn all other Governments as unlawful, yet the consequence will be the same upon your Principles: For if it be a good Argument which some make use of, for the Government of the Church by Bishops, because that Government being supposed by them to have been instituted by the Apostles by Divine Precept; therefore that no other Government but Episcopacy can be lawful, or any true Church, where that Government is not in use: So the same Argument will likewise hold in Civil Governments, that all others must be unlawful, if Monarchy alone were

ordained by God, and that all other Forms whatsoever began from Rebellion, or the Fancies of Men.

Mat. 18. 24. *Chap. 4. 1.* *M.* To answer what you have said, in the first place, I cannot so slightly pass over this Argument of the Law of Nations, by which I supposed the Power of Fathers over the Persons of their Children is sufficiently established, and from whence also it appears that among the *Jews*, as well as *Romans*, the Children were look'd upon as part of the Substance of their Father, and consequently that they had a perpetual right in their Persons, as long as they lived; that the *Romans* had the Power of selling their Children three times, yourself do not deny; that the *Jews* also had it in use among them, appears first, by the Story of the Poor Woman, the Widow of one of the Sons of the Prophets, who complained to *Elisha*, in the second of *Kings*, telling him that her Husband is dead, and the Creditor is come to take her two Sons to be Bondmen. And so likewise in the New Testament, our Saviour in *St. Matthew* supposes it as a thing commonly practised in those parts of the World where he lived. For in the Parable of the King, who would take account of his Servants, amongst whom, one owed him Ten thousand Talents; *But forasmuch as he had nothing to pay, his Lord commanded him to be sold, and his Wife and Children, and all that he had, and payment to be made.* Which was founded upon that Law amongst the *Jews*, that Fathers might sell their Children for Bondservants, until the Year of Jubilee, as appears by *Nehemiah*, Chap. 5. where he relates the Complaint of those poor *Jews*, who had been forced, for want, to bring their Sons and their Daughters into Bondage: Neither was it in their Power to redeem them, for other Men had their Lands, and their Vineyards.

And amongst the *Romans*, this Power of settling their Children continued, till it was forbidden by the Emperor *Justinian*. And as for the *Grecians*, *Plutarch* in his Life of *Solon* relates, that till his time it was lawful amongst the *Athenians*, for Fathers to sell their Children to pay their own Debts: And I suppose it was upon this account, that *Cymon*, the Son of that great General *Miltiades*, was kept in Prison by the *Athenians*, till he had paid the Fine of Ten thousand Talents, which his Father died indebted to the Commonwealth. And *Philostratus* in his Life of *Apollonius Thyaneus* relates, that it was common amongst the *Phrygians* to sell their own Sons. And to come to more Modern Times; a Son amongst the *Muscovites* may be sold four times; but after the fourth Sale, the Father hath no longer a Right in him, as the Baron of *Heberstein* tells us in his Relation of *Muscovy*; and it is not only in use amongst them, but also amongst the *Tartars*, *East-Indians*, *Chineses*, and the People of *Japan*, not only to sell their Children themselves, but also, that they are liable to be sold by the Prince, or his Officers, for their Father's Debts, or Offences: So that you see here is the consent of most of the civiliz'd Nations in the World, who sure in this follow the Dictates of Nature and Reason, in the exercise of a full and absolute Propriety and Dominion, in, and over the Persons of their Children; so that if it be a received Custom or Law amongst most Nations, it is also from Reason too, since the Law of Nations is only that which receives its obligation from the consent of many Nations, as *Grotius* well observes: And *Aristotle* lays it down as one of the strongest Proofs, when all Men agree in any thing: And *Cicero* tells us, That the consent of most Nations is to be looked upon as a Law of Nature; and therefore these Customs are to be esteemed as obligatory amongst all civiliz'd Nations, where the Municipal Laws of those Countries have not restrained or altered this natural Power, and Interest, which Fathers had originally over the Persons of their Children.

But as for what you say, that according to my Principles, no other Government can be lawful besides Monarchy, I shall give you the same answer, that some of the most Moderate of our Divines have given to those, who would make the like Objection against us of the Church of *England*, that believe Episcopacy to be *Jure Divino*, viz. That God, for the necessity of some Ecclesiastical Order and Government in a Church, may permit, nay (perhaps) allow that Form of Government as lawful, which himself never instituted; nay, which perhaps was unlawful to have been set up in the Church at all: And so likewise in Civil Governments, I will not deny, that those Forms may be lawfully obeyed as the Ordinance of God, which he never instituted; but have wholly proceeded from the Rebellions, or Inventions of Men.

F. I must confess, Sir, I cannot see how any Law of Nations can be supposed to lay any Obligation upon Mankind, different from the Law of Nature, and Reason,

Reason, or the revealed Law of God in Scripture. And, tho' I confess there is some division amongst Learned Men about this Matter; yet I think it is far more Rational to suppose, that there are but two Laws that can be Rules of Humane Actions, the Natural Law, and the Divine. And of this Opinion is the Learned *Grotius* himself, in the place you but now cited, where he says, he added the Words, *many Nations*, because there can scarce be found any Natural Law, which is also wont to be called the Law of Nations, that is common to all Nations: Yea, that is often look'd upon as a Law of Nations in one Country, which is not so any where else; as (says he) we shall shew in its due place, concerning Captivity, and *Postliminium*.

And for a farther Confirmation of this, I will make bold to read to you in *English* some part of what the excellent *Puffendorf* hath written upon this Subject, in his Learned Work *De Jure Naturæ & Gentium*, *Lib. 2. Cap. 3.* which you S. 23. may here peruse with me if you please.

"The Law of Nature, and the Law of Nations, is accounted by many, one and the same, which only differ by an extrinick Denomination. And from hence *Hobbs*, *De Cive*, c. 14. §. 4. divides the Law of Nature into the natural Law of Men, and the natural Law of Commonwealths, which is commonly called *Jus Gentium*: And then adds, that the Precepts of both are the same; but because Commonwealths, when once instituted, do put on the Personal Properties of Men; that Law which speaking of the Duty of particular Men, we call natural, being applied to all Commonwealths or Nations, is called *Jus Gentium*, to which Opinion we do likewise subscribe; neither do we think there can be any other voluntary, or positive Law of Nations, which can have the power of a Law properly so called, and which may oblige all Nations, as proceeding from a Superior. But most of those things, which amongst the *Roman* Civil Lawyers, and others, are referred to the Law of Nations; as suppose, about the manner of acquiring of Contracts, and the like, do either belong to the Law of Nature, or else to the Civil Laws of particular Nations, which agree together for the most part in these things; yet from which no new or distinct sort of Law can be rightly constituted, because those Laws are common to Nations, not from any Agreement or mutual Obligation, but in that they do by accident agree, from the peculiar Will of the Law-givers in each particular Commonwealth; from whence the same things may be changed by one People or Nation, without consulting the rest, and oftentimes are found to be so changed." And of this he here gives us several Examples of different Customs amongst Nations, in making War upon each other, according to diverse Forms or tacit Agreements, whereby War may be managed with as little Cruelty as may be. But thus he proceeds; "These Customs, although they may seem to contain some Obligation, as arising from this sort of tacit Agreement amongst Nations; yet if any Prince shall wage a lawful War, and neglect them, or should do quite contrary to them, he would not be guilty of any Sin against the Law of Nature"; but only of a piece of Roughness or Incivility, that he did not make War according to those Rules of Honour, which are used among them, by whom War is looked upon as a liberal Art. [And a little farther proceeds thus:] "Amongst the principal Heads of the voluntary Law of Nations, *Grotius* reckons the Right of Ambassadors, where we also suppose, that by the very Law of Nature, Ambassadors are inviolable even with the Enemy, as long as they appear Ambassadors, and not Spies, and do not contrive Plots against those to whom they are sent. And having shewn the necessity of Ambassadors in order to Peace, he thus goes on: But there are other Privileges attributed to Ambassadors, especially to those who reside in a place rather to fish out the Secrets of another State, than for Peace sake; those Privileges depend from the meer indulgence of that Prince to whom they are sent, and so, if it seems good to him, may be denied them, without the violation of any Right, if he will likewise suffer that his own Ambassadors should be treated in a like manner."

M. I see whether this Author tends, but do not understand what use you can make of it to your purpose.

F. But I will quickly shew you, if you please to have a little Patience: And therefore to apply what I have now read to the Matter in hand; in the first place, it is apparent from this Author, that the Law or Custom of Nations hath no Obligation as such, but only as it agreeth with the Law of Nature, and the Law

of God; and what Laws of Nations are founded on the Law of Nature, can only be tried by some Rule, which certainly is not to be learnt from the Knowledge of the Customs or Laws of all Nations; since who is able to know them all? And therefore these Laws must be tried, either by the natural light of a Man's own Conscience, or else by considering, whether this or that Practice of a Nation conduces to the honour or service of God, or the common good and happiness of Mankind, and so may be known as well by the Unlearned as the Learned. Now I suppose you will not affirm, that this Law of the absolute Property and Dominion of Fathers in and over their Children, can be discovered by either of these ways; or that a Man's Conscience will tell him, that it is his Duty to let his Father kill him or sell him, or use him like a Brute, without any Contradiction or Resistance. And as for the other, I think I have sufficiently proved, that this absolute Power, which you assert of Fathers over their Children, doth not proceed from that great Law of Nature, *viz.* the common Good and Preservation of Mankind, to which the Practice of it may prove very destructive; which, if proved, I think I may easily answer all that you have now said about the particular Customs or Laws of divers Nations concerning this matter, tho' your Instances were many more than they are.

For, in the first place, as for those you alledge out of Scripture, they do (as I said before) only regard the Municipal Laws of the *Jews*: Those of the *Romans* touching this matter did only concern that Commonwealth whilst it was in being, and no other Nations whatsoever. And for this Opinion I have both *Grotius* and *Puffendorf* of my side: For the former, in the beginning of the Chapter last quoted, after having set down the different Powers which Fathers may exercise over their Children, according to their different Ages, thus affirms: "Whatsoever is beyond these Powers, proceeds only from a voluntary Law, which is different in divers Places: So by the Law which God gave the *Jews*, the Power of the Father over his Son or Daughter, to dissolve their Vows, was not perpetual, but only endured as long as the Children were Parts of their Father's Family.

And by the same Rule I may add, that Children were not reckoned as part of their Father's Goods, and to be sold by him, or seized upon by Creditors for his Debts, any longer than they continued Members of their Father's Family, and consequently were not seized upon as his Sons, but Servants. And I defy you to shew me an Example, where ever among the *Jews*, the Children, after they were adult, and parted from their Father's House, were sold or seized as Slaves for their Father's Debts. And as for the *Romans*, it is plain they acknowledged their *Patria Potestas* to be in use amongst them neither by the Law of Nature or Nations, but only from their own Civil Law, as appears by this Title, almost at the very beginning of *Justinian's Institutions* (which, as I suppose, you know better than I) *Inst. L. 1. §. 2. Patria Potestas est Juris Civilis & Civium Romanorum propria.* The Text follows in these Words (as I remember) *Jus Potestatis, quod in liberos habemus, proprium est Civium Romanorum; nulli enim alii sunt homines, qui talem in liberos habeant potestatem, qualem nos habemus:* And therefore they would not permit Strangers to exercise it over their Children within the City of Rome. And if the Power of the Father amongst the *Jews* and *Romans* was not by the Law of Nature or Nations, no more could it be so, tho' exercised amongst never so many other Nations; since if it were one of the Laws or Precepts of Nature, it could never have been taken away or restrained by any Civil Law, no not by the express Consents of all Fathers. And as for your Instance of *Cymon* amongst the *Athenians*, it makes nothing to this purpose; since, if I take it at the worst, it maketh no more, than that the *Athenian* Commonwealth dealt very ungratefully and tyrannically with *Miltiades* and his Son; and it might be that they kept him Prisoner, as being Heir to his Father's Principality in the *Thracian Chersonnese*, out of which they supposed he might pay the Debt; as the King with us doth often put an Heir in Prison for his Father's Debts, where he hath Assets by Descent.

But for all your other Examples, unless they have a Reason in Nature to support them, they will no more prove that by the Law of Nations Fathers should have a Right of Life and Death, or of selling their Children, than if you should argue from the common Custom amongst the *Lacedemonians*, the *Aborigines* in *Italy*, the Inhabitants of the Kingdom of *Sephiris*, as amongst the *Indians* mentioned by *Qu. Curtius*, and the *Chineses*, and the Inhabitants of *Formosa* at this Day; all which either did, or now do destroy their Children as soon as they are brought forth,

forth, or else in the Womb before they are born, if they please so to do. And as for some of these Nations you have instanced in, and particularly the *Muscovites*, who can sell their Children but four times, it is apparent it is only a Municipal Law; for if the Property of the Father over the Sons Persons were by them looked upon as perpetual, he might not only sell him four times, but forty, if it were possible. And after all, I suppose you will not be ty'd to follow the Practice of the *Muscovites* in other Actions, as a Pattern for other more civilized Nations.

But on the other side, I have, against this Custom of your Nations, the Examples of divers altogether as wise and civiliz'd, who did not permit Fathers to exercise this absolute Power over their Children; and therefore against your Example of the *Jews* I set that of the *Egyptians*, who did not permit Parents to put their Children to Death, nor yet to sell them, unless in case of great necessity, and when they could not otherwise maintain them; and then I grant it may be necessary. So likewise against your *Roman Law*, I set that of all the *Greek Nations*, none of whom permitted Fathers to put their Children to Death, except the *Spartans*; and that was only in one case, and that with the Judgment and Consent of the eldest Men of the Family, when their new born Infants were so weak or ill shaped, as to be thought not worth the rearing. So likewise against your Examples of the antient *Gauls*, I set that of the *Germans*, a Nation altogether as wise and civilized as the other, to whom I could likewise add the antient *Britains*, *Spaniards*, and divers others. And to the more modern Examples of the Eastern Nations, where this Custom is permitted of selling or killing their Children, I shall oppose the *Turks* and modern *Persians*, amongst whom it is forbidden, as also amongst all the Nations of *Europe*, who believe Christianity: And if we go over to *America*, we shall find that they are there so indulgent to their Children, that no Fault whatsoever, tho' never so great, shall make them put them to Death. And to let you see that this is most suitable to Reason, the two greatest Philosophers amongst the *Greeks*, *Plato* and *Aristotle*, have condemned it; the former in his Laws, where he expressly forbids it, supposing that in no case whatever a Father ought to put off all Piety and Humanity towards his Son, and that a Son should be rather led by Nature, than driven by Force, to obey his Father; especially since his Power is sufficiently established by the Law, and the appointing of publick Judges. And *Aristotle*, in his Morals to *Nicomachus*, lib. 8. cap. 12. accuses the *Jus Patrium*, then in use among the *Persians*, as tyrannical: And *Grotius* tells you, he produces these Examples of the *Romans* and *Persians*, only that we might distinguish Civil Rights from Natural. From whence it appears, that the putting of Children to death by Parents was look'd upon as an odious thing amongst the wisest of the Antients; and therefore neither the *Lex Regia*, nor the Law of the XII Tables, nor the *Julian Law de Adulteriis* (all which left Fathers a Power over the Lives of their Sons and Daughters) yet would extend this Power by Interpretation to the Grand-father towards his Grand-son or Grand-daughter.

Plutarch. in Lycurgo.

*Vid. P. Fren-
dus Rerum
Judicatarum
L. vi. &
cap. 17. De
Emendatione
Liberiorum.*

M. Yet for all this, I think all the wisest and most civilized Nations were of my opinion, and it is from them that we ought to take this Law of Nations rather than the others; and therefore I think the *Romans* were a great deal wiser and better People than the *Greeks*, and the antient *Gauls* than the *Germans*. Nor does your Argument against this Power of Life and Death in Fathers by the Law of Nature seem cogent, that if it were so, it could never be taken away or restrained by any Civil Law; since this Argument will make as much against that Power of Life and Death, with which you invest your Fathers of Families in the State of Nature; since if they have it by the Law of Nature, it could no more be restrained or taken away by Civil Laws, than any paternal Power in the like case.

F. I pray, Sir, hold: If this Controversy is to be decided by the Wisdom and the Civility of Nations, we shall never have done: For in the first place, who shall judge of this Consent of the most civilized People? and that no account is to be made of those whom you call barbarous; for what Nation will acknowledge it self to be so, or can arrogate so much to it self, as that it may require all others to conform themselves to their Laws and Customs; and that all Nations must be barbarous that act otherwise? Antiently the Arrogance of the *Greeks* made them look upon all other Nations as barbarous; and then the *Romans* succeeded in this foolish Conceit of themselves; and at this day we People of *Europe* (who are but a few in comparison of the rest of the World) do suppose our selves to exceed

exceed all others in Knowledge. And yet on the other side there are divers Nations, who prefer themselves far before us; and I have read that the *Chineses* have a Saying, that the *Europeans* see with one Eye, themselves with two, but that all the rest of the World are stark blind; and yet this Nation maintains a Power of selling and exposing their Children, which we *Europeans* abhor. Now pray tell me, if there is not some common Rule to be drawn from Reason, or the common good of Mankind, how shall we judge which is in the right? So that notwithstanding all that hath been said on this Subject, I think I may safely conclude with the Judgment of the Learned *Puffendorf*, in *Lib. 6. Cap. 2.* where speaking of the Paternal Power, he says thus: "But neither the same Power, as such, seems to extend it self to that of Life and Death by reason of any fault, but only to a moderate Chastisement. For since this Authority is employed about an Age that is weak and tender, and in which such incorrigible Crimes can hardly be committed, which nothing but Life can expiate; it is much better that a Father should turn out of doors a Son, who doth wilfully refuse through Obstinacy and Wickedness all due Correction. So that Abdication and Disinheriting seems to be the utmost Punishment which can be inflicted by a Father on a Son, considered as such."

M. I see it is to no purpose to spend longer time about this Question; since yourself have all along allowed, that the Father of a separate Family in the State of Nature hath a Power to put his Wife or Children to Death, in case they have committed any heinous Sins or Offences against the Laws of God or Nature. But you have not yet told me (and I doubt cannot) how *Adam*, or any other Master of a Family, could be endued with this Power of Life and Death, unless it were granted him by God.

F. I promise to give you full Satisfaction to this Question by and by; but in the mean time, pray let me make it a little more plain to you, that this Power of Life and Death, which may be exercised by Masters of separate Families over their Wives and Children, in some cases, is not by any Power they receive from God, as Husbands or Fathers, but only as Heads or Masters of such Families, may be proved by this Instance: Suppose a Master of a Family, independant on any other (as in the *Indies*) hath neither Wife nor Children; yet sure he hath notwithstanding the same Power of Life and Death over his Servants or Slaves, for such great Offences as you have mentioned, in case there be no superior Power over him to take cognizance of such Crimes. And to make this yet plainer, suppose a married Man, having a Wife and Children, will live (together with them) in the Family of such a Master as I have now described (yet not as a Servant, but as an Inmate or Boarder) and whilst he so continues, his Wife kills one of her Children, or one of his Sons, murders his Brother, who hath Right to punish this Offence, but the Master in whose Family he is an Inmate? And this follows from your own Supposal: For if every separate Family in the State of Nature be a distinct independent Government, then all those that enter themselves, as Members of such a Family, must be subject to the Master or Governor of it. Nor do you reduce me into any Absurdity by your Reply to my Argument, by urging, that if the Power of Life and Death were originally in Fathers by the Law of Nature, it could never be restrain'd nor taken from them without their Consent: That then this will make as much against the like Power of Masters of Families; since I must grant, this is taken away by Civil Laws; and why may not the other? To this I reply, that you do not observe the strength of these Words, *Without their Consent*: For I suppose that no Power whatever can take this out of the hands of such Fathers, or Masters of Families, in the State of Nature, without they assign it to the Supream Powers of the Commonwealth upon its first Institution; whereas you make this Power to be obtainable by Force, by Conquest, or Usurpation, not only over those that are not at their own disposal, as Children and Servants, but over their Fathers and Masters too, without their Consents; which is contrary to the Law of Nature and Reason.

M. I see you take it for granted, that I will admit your Instance of the Power of Life and Death to be in the Masters of Families, and not as Fathers, in the State of Nature: But as plain as you think it, since you question the Power of Life and Death, which I suppose to be inherent in all Fathers; I know not why I may not with more Reason question your allowing the like Power to Masters of separate Families, since there is no reason, in my Opinion, which you can bring

for such a Power in your Masters of Families, which I cannot with like reason urge, may be also exercised by Fathers and Husbands over their Wives and Children, in case they deserve it. For if it be for the Good and Preservation of Mankind, that great and enormous Crimes, such as Murder and Adultery, should be punished, and that with Death; who is more fit to inflict these Punishments, or who can be supposed to judge more impartially of them than the Father or Husband himself? since he cannot put his Son or Wife to death, however they may deserve it, without very great reluctance; since he, as it were, thereby lops off a Limb from his own Body. And therefore I cannot see any Reason why such a married Man as you describe should, by coming under another Man's Roof only as an Inmate or Boarder, and not as a Slave (which I grant would alter the Case) lose that Power of Life and Death, which I suppose he hath by the Laws of God and Nature over his Wife and Children, unless he had actually given it up to the Master of that Family, with whom he came to board. And therefore as I do not deny, but that a Master of a separate Family hath Power of Life and Death, and also of making Peace and War with other such Masters of Families, nay with Princes themselves, if there be occasion, as we read in *Genesis*, Ch. 14. that *Abraham* made War with the four Kings who had taken *Lot* Prisoner. So likewise when *Judah* pronounced Sentence of Death against *Thamar* his Daughter-in-law, for playing the Harlot, *Bring her forth, says he, and let her be burnt*, Gen. 38. I own this was not done by the Authority of a Father alone (she not being his own Daughter, and his Son being then dead) but as the Master of a separate Family, who hath (I grant) Power of Life and Death, as he is Lord over the Persons of his Children, as Servants, and consequently over their Wives also: For if he hath Power over his Son, he hath certainly the like over all that belong to him, as long as they continue Members of his Family, and that he hath not thought fit to manumit or set them free. But now I desire to know by what Right these Patriarchs could exercise all these Marks of Sovereignty, especially this great Power of Life and Death, unless it were derived from God at first; since no Man hath any Power to dispose of his own Life at his pleasure, and therefore sure hath naturally no Power over that of another Man's: So that not only this Power of the Patriarchs, but also that of all Monarchs to this day, must be derived from this *Divine Original*.

F. Well then, I find you're forced to quit the Power of a Father, as such, by Generation; since it plainly appears, that this Power of Life and Death, which you affirm a Husband or Father may exercise over their Wives or Children in the State of Nature, is not, *quatenus* a Father, but Lord and Master over them; which in the first place I cannot allow to be true in relation to the Wife; nor that the Submission of the Wife's Will to the Husband must imply a Power of Life and Death over her: For if she is not his Slave (as certainly she is not, for then a Man might sell his Wife when he pleased) I cannot see how she herself could convey by force of the Contract any such Power over her Life, tho' I grant indeed, if she happen to commit Murder upon one of her Children, or other Person of the Family, he may proceed against her as an Enemy, but not as a Subject; and if it be for Adultery it self, I cannot see that the Husband can by the Law of Nature punish her with Death: For since that Crime doth really dissolve the Bond of Matrimony, Divorce, or putting her away, and deserting the Child born in Adultery, was even among the *Romans* look'd upon as a sufficient Punishment. But as for the Power of Parents over their Children, I do not deny but that a Father may have the like Power over his Children whilst they are part of his Family, as over his Slaves or Servants, in case of such great and enormous Crimes as you have already mentioned; but that this is not as a Father, but Master of a Family, your self have already granted in your Instances of *Abraham* and *Judah*; tho' if you will consider the last a little better, you will find that *Judah* did not proceed thus against *Thamar*, as her Father or Master, but by some other Right: For if you please to look upon the 11th Verse of that Chapter of *Genesis*, from whence you cite this Example, you will find that *Thamar*, after the Death of *Onan* her Husband, went with *Judah's* leave, and dwelt in her own Father's House, and she was then a Member of his Family, and consequently (according to your Hypothesis) not under *Judah's* Power, when she was thus got with Child by him; and therefore not he, but her own Father ought to have condemned her, if this Judgment had belonged to him as to the Master of the Family. And therefore some

of the Rabbins with more reason suppose, that when *Judah* gave this Judgment against *Thamar*, he did not act either as a Father or Master of the Family; for he was then under the Power of the *Canaanites* (who certainly had some Civil Government among them at that time) and therefore they suppose that he acted thus as a Civil Judge, appointed by the Prince or supreme Magistrate of that Nation.

But to defend the Instance I have given you of a Father of a Family losing his Power of Life and Death, upon his becoming a Part or Member of another Family; you your self have already yielded me as much as I can reasonably desire for the defence of my Assertion, since you allow this Power of Life and Death to Fathers, not as such, but as Lords and Masters over their Children, as over their Slaves; and if so, I desire to know who can challenge this Power but the Master of the Family with whom he lives, unless you can suppose two distinct Heads or Masters in the same House; and then they will not be one Family, but two, under different Heads, each of them still retaining their distinct Rights. But you will say, that this Boarder or Inmate is not a Servant or Slave to the Master with whom he lives, and therefore hath not forfeited or given up his Right or Power of Life and Death over his own Children to him. It is no matter whether he did or not, since by making himself a Member of the other's Family, he ceased to be Master of his own, and consequently must lose all the natural Rights or Prerogatives belonging to it, of which I grant this of Life and Death to be the chief: For if Families in the State of Nature are like so many distinct Commonwealths, independent upon each other; it will likewise follow, that the Heads of those Families must be in all things necessary for the Good and Preservation of the Family, like so many distinct Civil Sovereigns, and consequently must have a Power of Life and Death, and also of making Laws, with Punishments annexed to them, in all Cases where the Good and Peace of the Family require it. If therefore in a Civil State, or Monarchy, an absolute Prince come into the Dominions or Territories of another, it is acknowledged by all Writers on this Subject, that such a Prince loses that Power of Life and Death which he had before, and cannot exercise it as long as he is in the other Prince's Dominions: So by the same reason, if Masters of Families, in the State of Nature, are like so many Civil Sovereigns, it will follow, that they must cease to be such, when they become Members of another's Family, unless you will fall into the Absurdity of supposing two absolute independent Heads, or Masters, in one and the same House; which, what a Confusion it would bring, I leave to your self to judge.

M. I shall not much dispute this Power of Life and Death with you, as belonging to Masters of separate Families: But pray shew me how they can exercise this Power over the Lives of those that are under their Jurisdiction, unless it were granted them by God, by virtue of that *original Power* given to *Adam*, not only as a Father, but Prince of his Posterity.

F. I do not doubt but I shall give you a satisfactory Answer to this important Demand, without supposing any extraordinary Divine Commission from God to *Adam*: For as for your Instance of *Abraham's* making War, Leagues, or Covenants with other Princes, it is no more than what any Master of a separate Family may do for his own and their defence; and what, if you or I were Masters of a Family in the *Indies*, where there is no Power above us, we might do as well as *Abraham*; and all this without any other Commission from God, than the great Right of Nature, Self-preservation, and the Well-performance of that Trust which God hath put into our hands, of defending and providing for our selves and our Families; since if God hath ordained the End, he hath likewise ordained all Means necessary thereunto: and therefore there is no such great Mystery in this as you suppose.

M. If there were no more in it than a mere Right of Self-defence, for which I grant Retaliation or Revenge may be also necessary, you would have a great deal of Reason on your side: But pray shew me how a Father, or Master of a Family, can condemn either his Wife, Child, or Servant to Death, as a Punishment for any enormous Crime, such as I have mentioned (and you agreed to) without such a Divine Commission as I suppose *Adam* had; since I own Revenge or Retaliation may be used by private Men in the State of Nature, by the Right of Self-defence, which I grant may be exercised between Equals. But since all Punishments, properly taken, are the Acts of Superiors towards their Inferiors, I cannot conceive how any Father, or Master of a Family, can inflict so great a Punishment as

Death

Death upon any Member of it, unless he derived this Power immediately from God, by vertue of the Divine Charter committed by him to *Adam*, and from thence to be derived to all Masters of Families, or Civil Sovereigns, who could never derive this Power from the joint Compacts or Consent of Fathers, or Masters of Families; since no Man could convey that to another, which he had not himself. And I have already, I think, with a great deal of Truth asserted, that no Man hath Power over his own Life, to take it away when he pleases, and therefore cannot have it over another Man's; much less can convey any such Right to others, except it were granted at first by God, in the manner I have supposed, which I conceive may easily be made out by several Places in *Genesis*; by which it plainly appears, that *Adam*, and after him *Noah*, were supernaturally endued with this Divine Power.

F. Though I am satisfied that this Hypothesis is extremely absurd; since if it were so, only Christian or Jewish Sovereigns, or Magistrates, who acknowledge the Scriptures, could lay any claim to, or exercise this Divine Power; whereas we find it practised by all those Nations, with whom the Memory of *Adam* and *Noah* is quite lost, and therefore must claim this Prerogative, not from any revealed, but natural Law of God: Yet however, since you think you have such clear Texts of Scripture on your side, I desire you to produce them, tho', if they should make out what you say, they would only serve to confirm, by Divine Revelation, that Prerogative of Life and Death, which all Masters of Families, as well as Civil Sovereigns, enjoyed by the Law of Nature, before ever the Bible was written.

M. As for my own part, I am so well satisfied of this Supreme Power of Life and Death granted at first by God to *Adam*, and after to *Noah*, that I cannot see that without the Supposal of this, any Supreme Power could lawfully be exercised by Civil Sovereigns at this Day: And therefore I am of Mr. *Selden's* Opinion, who in his most learned Treatise, *De Jure Gentium apud Hebræos*, maintains, with the Jewish Rabbins, That the Law of Nature can never be plainly proved, and made out by Reason, without a Tradition of its Precepts, as given by God to *Adam*, and thence conveyed to *Noah*, and his Posterity: Which Divine Laws, or Commands, are called by the Jews, the Seven Precepts of *Noah*, which whatsoever People would observe, they permitted them to live as Inhabitants among them; though they did not embrace Circumcision, or those other Rites and Ceremonies commanded by the Law of *Moses*. Now amongst these Precepts, that of instituting publick Judgments for Capital Crimes, is one of the first, in pursuance of that Command which God gave *Noah* immediately after the Flood, *Gen. 9. v. 6. Whosoever sheddeth Man's Blood, by Man shall his Blood be shed; for in the Image of God made he Man.* By which Text almost all Commentators understand, that it is not any common Man, but the Person of the Civil Magistrate, or Sovereign, that is to be meant: Since it would be both impracticable, and also breed great Confusion in Civil Societies, if by this Word *Man*, every common Person, not endued by God with this Supreme Power of Life and Death, should be understood; and therefore I do suppose, with the most learned Jews, that this Power was first exercised by vertue of that Divine Charter that was given of it by God to *Adam*, and then renewed again to *Noah*, by the Text above-mentioned.

Now that *Adam* had, by Divine Grant, an absolute Dominion over the whole World, and all Creatures therein contained, will appear from *Gen. 1. v. 27, 28.* F. P. O. 210, 211. (Here is the Bible, I desire you would read it with me.) So God created Man in his own Image, in the Image of God created he him; Male and Female created he them: And God blessed them; and God said unto them, Be fruitful and multiply, and replenish the Earth, and subdue it; and have dominion over the Fish of the Sea, and over the Fowl of the Air, and over every living thing that moveth upon the Earth. By which Grant, or Donation, from God of subduing the Earth, and having dominion over the Creatures, *Adam* was made the general Lord of all things, with such a particular Propriety to himself, as did exclude his Children from having any share in it. So that if *Cain* had his Fields for Corn, or *Abel* his Flocks, and Pasture for them, it was only by *Adam's* Grant, or Assignment, none of his Children or Descendants having any Property in Lands or Goods, without his particular Grant, or Permission.

F. You must pardon me, Sir, if I cannot be of your Opinion, that all the Precepts of the Law of Nature must depend upon no firmer Foundation, than

a Tradition of the seven Precepts, supposed by the *Jewish* Rabbins to be given to *Adam*, and *Noah*, and from them conveyed to all their Posterity; since we find not the least mention of any such Precepts in the Scripture, or in *Jesephus*, *Philo*, *Judaus*, or any other antient Writer, but only in the *Talmud*: Which, though it pretends to a great Antiquity in its Traditions, yet any judicious Man that will but peruse it, may easily see the Falshood, as well as Absurdity of the pretended Tradition of these Precepts; one of which is against eating the Members of any living Creature, which savours so strongly of a *Jewish* Superstition, that if that were a true Precept, or Law of Nature, no Man could eat a Dish of Lamb-stones, or a Black-Pudding, without sinning against the Law of Nature: And it is very improbable to suppose, that all Mankind, except *Jews*, *Christians*, and *Mahometans*, should be obliged to live or act by those Laws or Precepts they never heard of. For if (as you your self must grant) the Memory or Tradition of these Precepts be quite lost amongst all Nations, except the *Jews*, it is all one as if they had acted without any Law at all; and consequently, if they have not some better grounds for their Observation of the Law of Nature, than these Precepts of *Noah*, I doubt whether (according to your Hypothesis) all Civil Sovereigns, that do not own the Original of their Power of Life and Death to this Divine Charter granted to *Adam*, and *Noah*, are any better than Murtherers, since they take upon them to exercise this great Prerogative without any Divine Authority for so doing. But I hope to shew you, before we have concluded this Conversation, that not only the Power of Life and Death, but also other Laws of Nature, may easily be deduced, by Reason, to have been given by God to Mankind, by the ordinary Course of his Providence, without recurring to Divine Revelation; which can only oblige those that have heard of it. But since you lay so much stress upon those Texts of Scripture you have now cited, I pray give me leave to examine, whether they will bear that Sense you put upon them. As for the first of those Texts you quote, *Whosoever sheddeth Man's Blood, by Man shall his Blood be shed*, &c. Suppose I should take it in that sense you put upon it, only to extend to Civil Sovereigns, or Magistrates, it will be so far from proving a Power of Life and Death to have been granted by God to *Adam*, and from him conveyed to *Noah*, that this Place seems to imply the contrary; for if it was a known Law before, that Murther was to be punished with Death by a Father, or other Magistrate, to what purpose was this Command now given to *Noah*? Since if it were a Divine Law before the Flood, wherefore is it here repeated? And therefore all Expositors agree, that this is the first Precept enjoining Murther to be punished by the Civil Magistrate, which, before, any of the Kin of the Person slain might have executed; as appears by *Genesis* 4. v. 14. when *Cain* said unto the Lord, *I shall be a Fugitive, and a Vagabond on the Earth; and it shall come to pass, that every one that findeth me, shall slay me*; which had been a needless fear, if none but *Adam* had a Power to take away his Life for the Murther of his Brother, as you suppose; much less that God should have needed to have set a Mark upon him to keep him from being murdered by his Brethren, or other Relations. Nor will that other Place you cite out of *Genesis* prove *Adam's* sole Dominion over the Earth, and all the Things and Persons therein contained: For if you please to consider it, you will find, that it is so far from proving your Opinion, that it speaks the direct contrary. Pray therefore observe of whom *Moses* speaks in that Place: Surely, not of *Adam* alone, when he says, *Male and Female created he them; and God blessed them, and said unto them, Be fruitful and multiply, and replenish the Earth, and subdue it, and have Dominion over the Fish of the Sea, and over the Fowl of the Air, and over every living thing that moveth upon the Earth*: From whence we may observe, first, That these Words being directed in the plural number, both to the Male and Female, were not intended to *Adam* alone; but by way of Anticipation, not only to himself, and *Eve*, (who was not then made) but likewise to their Posterity (that is) all Mankind: Then that they should *be fruitful, and multiply, and replenish the Earth, and subdue it*, (that is, possess and enjoy it) *and have Dominion, &c. over every living thing that moveth* (in the *Hebrew*) creepeth upon the Face of the Earth. By which Words it appears, that not any Dominion over Mankind, but only over Brute-beasts, that move or creep upon the Earth, is hereby conferred. And that this must be the true meaning of this Place, is plain, if you will but read the two next Verses that follow. *And God said, Behold I have given you every Herb*
bearing

bearing Seed, which is upon the Face of all the Earth ; and every Tree, in which is the Fruit of a Tree yielding Seed ; to you it shall be for Meat. And to every Beast of the Earth, and to every Fowl of the Air, and to every thing that creepeth upon the Earth, wherein there is Life ; I have given every green Herb for Meat ; and it was so. Which Words are certainly directed to the same Persons as the former (that is) to all Mankind, by the same Argument as that every green Herb is here granted for Meat to every Beast of the Earth, and every Fowl of the Air, &c. that then was, or ever shall exist in Nature. So that this Text, which you have cited to prove this absolute and sole Dominion of *Adam* over the Earth, and all the Creatures therein contained, is so far from proving any such thing, that it seems to me to make out the direct contrary Doctrine, viz. that the Earth, and all the Creatures therein, were not granted to *Adam* alone, as the sole Lord and Master of them ; but in common to himself, his Wife, and all his Posterity, who had as good a right to them, as he had himself. So that I must tell you, if you intend to bring me over to your Opinion, you must produce some better Proofs out of Scripture, or Reason, than those made use of by Sir R. F. And therefore I desire that you would give me some plainer Proofs for *Adam's* absolute Power over his Wife, and all his Posterity, than hitherto you have done ; since I cannot see any Divine Charter granted by God in Scripture, of any absolute Power, or Dominion, over their Lives or Persons.

M. I shall, Sir, do my best Endeavour to give you all the Satisfaction I can possibly therein ; therefore I desire you farther to take notice, that Mr. *Selden*, in his *Mare Clausum*, from the ancient Tradition of the Jewish Rabbins, L. 1. c. 4. has understood this Text in *Genesis*, to give *Adam* an absolute Power over the Earth, and all things therein contained, exclusive to his Posterity, as long as he lived. So that if Sir R. F. and divers others, have erred in the sense of this Place, I believe it is more than you or I can prove, since sure they would not have put this sense upon it, without they had some good reason for it.

But this much, I suppose, you will admit, that *Adam* was created by God, and is in Scripture called the Son of God, as indeed he was ; and if so, let Luk. 3. 27. your self, or any other rational Man consider, whether it be at all likely that God should not endow this Son of his, the Father of Mankind, with so much Authority and Power as should enable him to govern his own Family, and Children, as long as he lived, without depending upon them for their Consent, and chopping Logick with them, whether his Commands were reasonable, or lawful or not ? And if a Power of Life and Death was necessary (as the Murther of *Abel* by *Cain* shews it was) whether *Adam* had no more share in that Power, than any of his Children or Grand-children : Which is sufficient to shew you the Absurdity of your Tenets, that the Authority of *Adam* over his Posterity was not absolute in its Exercise, as well as perpetual in its Duration : And this, I think, you cannot but admit, because you have already acknowledged this B. P. P. Sect. 32. Power of Life and Death to proceed from, or to be granted by God to *Adam* ; and so consequently must have continued with him as long as he lived.

F. Well, I perceive you find your Monarchy, or absolute Dominion of *Adam* over *Eve*, and all her Posterity, as also over all the Creatures of the Earth, not to be proved from any of these places of Scripture you have brought for this extravagant Opinion ; and therefore you now urge upon me my own concession of this supream and absolute Authority of Life and Death, which I do not deny but *Adam* might have exercised in some cases over his Wife and Children, as long as they continued part of his Family : But that he was not endued with this Prerogative as a Father, but as a Head or Master of his own Family, I think I have sufficiently proved, and therefore need not repeat it. And indeed, your own Instance of the Murther of *Abel* by *Cain*, (which, for all we can find, past unpunished by *Adam*) sufficiently proves, That this Power of Life and Death over his Children or Grand-children, when once they were separated from his Family, was not a necessary Prerogative of his Government ; or else that his Children, and Grand-children, when they have erected new Families of their own, had it as much from God as he ; and that from the same Reason which you give, why God endowed *Adam* with it, viz. because without such a Power, they could not have been enabled to govern their Children and Families as long as they lived. So that *Adam's* being created by God, or called his Son, gave him not a jot more power over his Children, and his Descendents, than what, as a Master, or

Head

Head of a Family, he would have had by the Law of Nature however; and it is all one in this Case, whether you suppose Mankind to have been created by God, or to have existed from all Eternity, provided you hold the Being of a God, according to the Hypothesis of the more Modern *Platonists*, who though they held the Eternity of the World, yet likewise owned all things to be governed by God's Providence: And therefore, if on this Supposition Mankind could not be well governed nor preserved, without inflicting of Capital Punishments for great Crimes, and that they are necessary for its Peace and Preservation; it is likewise as necessary, that there should be some Judge appointed by God to inflict them, which in the State of Nature can be only the Head, or Master of a Family; as after Civil Government is once instituted, it belongs to the Civil Sovereign or Commonwealth. And this I hope will serve to answer your Scruple, how *Adam*, or any other Master of a separate Family, may very well be endued with this great Power of Life and Death by the Law of Nature, without supposing any Charter granted him for it by Divine Revelation; or else depending upon his Children's consent for his Exercise of it.

But before I farther consider, whether this Power of *Adam*, or of any other Father or Master, be perpetual or not, and extends any farther than his own Family, give me leave to examine, whether or no Children, when grown to years of Discretion, and even while they continue Members of their Father's Family, may not in some cases chop Logick with him, (as you call it) and not only question, but judge whether his Commands be reasonable or lawful, or not; or else *Abraham* (for Example) must have sacrificed to Idols, because his Father bid him. Whereas *Josephus* tells us, *He rather chose to quit his Country, and his Father's House, than to sin against God.* And therefore I think you cannot deny, but if Husbands or Fathers command their Wives or Children to do any thing that is morally unlawful, or contrary to the Laws of God, or Nature, they may lawfully (nay are obliged) not to obey such unlawful Commands.

*Vid. Jos.
Ant. lib. 1.*

*B. P. P.
Sect. 48.*

M. I shall so far agree with you, that if the thing commanded be apparently contrary to the Laws of God and Nature, that they are not obliged to obey their Commands; but they must be evidently, and apparently so, before they thus take upon them to refuse Obedience to them; otherwise I deny, that their Conscience, however misguided, ought to be any excuse, or just ground of their Disobedience. For if their Conscience be truly grounded upon the Laws of God, or Nature, that will excuse them; but if it be not, Conscience without such a Law can never do it. And yet this Non-performance of the unlawful Commands of the Husband, or Father, may very well consist without any Anarchy, or Disorder in the Family; since the Wife and Children must always yield him an active Obedience, in performing all his Commands, or else a passive one, in submitting to whatever harsh Usage, or Punishment, such a Husband, or Father, shall please to exercise or inflict upon them for their Nonperformance of them, though never so unlawful. But yet certainly in all possible and indifferent things, Children are bound to yield, not only a passive, but an active Obedience to their Father's Commands: For if his Children should have a liberty to judge of his Commands, whether they are reasonable or not, what can ensue but Anarchy and Confusion in all Families?

F. Well, I am glad we are so far agreed, that a Wife and Children in the state of Nature have liberty to judge of their Husband's and Father's Commands, whether they are lawful or not, and also to disobey them when they are not so: And I think I may carry this a little farther, and affirm, that such Wife and Children ought not to obey the Commands of such a Husband, or Father, though they are not really contrary to such Divine or Moral Laws, but only erroneously supposed so by them; and therefore most Casuists agree, that even an erroneous Conscience does oblige, as long as a Man lies under that mistake. For *St. Paul* tells us, *Whatsoever is not of Faith, is Sin*, Rom. 14. Nay farther, such an erroneous Conscience may excuse a Man before God, if his ignorance was not wilful, but invincible, and not proceeding from his own fault; but of this no Man can judge but God alone, and the Party whose Conscience it is; and therefore such a Husband, or Father, can have no right or authority to compel their Wives and Children to perform such Commands, because the Will ought always to follow the Dictates of the Understanding; and therefore they should not be forced to do that, which they judge contrary to God's Moral or Divine Law; since Conscience may be instructed, but can never be forced. Neither will your distinction

of

of an active and passive Obedience help you in this Matter : For active Obedience I understand well enough ; but as for passive Obedience, I think it is next door to that we call a Bull or Nonsense. And to prove this, I shall give you this plain Instance ; suppose you had a *Jew* to your Servant, and should command him to do you some Work or other on a *Saturday*, which he judged a Breach of the fourth Commandment, that forbids him to work on the seventh Day, (or Sabbath) and you being very angry, should cudgel him soundly for this refusal ; whereupon he tells you, that you may beat him as long as you please, he would not resist, but yield a passive Obedience ; but yet could not perform your Commands : I ask you now, whether you would rest satisfied, that this *Jewish* Servant had sufficiently performed what you bad him, by submitting to your cudgelling ? And whether your Dinner or Horse would not be as much undressed after this sort of passive Obedience, as it was before ?

M. Perhaps indeed this Phrase of Passive Obedience may be somewhat improper, and may be more properly termed an absolute Subjection, or Submission ; but it is all one what we call it, as long as you understand what we mean ; since such Submission doth sufficiently avoid that Anarchy and Confusion which would necessarily follow, in case it were lawful for Wives, or Children, in any case whatsoever, to resist their Husbands, or Fathers, though for the defence of Life it self ; since no Government can be maintained, where the Parties governed have a right to resist their Superiors, or Governors, in any case.

F. I grant indeed, that no Government can be maintained, where the Parties p. n. M.
p. 110. governed resist their Superiors or Governors in the due exercise of their Power ; but when they exceed those limits, they cease to act as true Superiors, or Governors ; and therefore when, instead of Husbands, or Fathers, they prove Destroyers of their Families, I doubt not but they may then be lawfully resisted by them. For suppose such a Father of a Family should, in a furious or drunken fit, go about to kill his Wife, or one of his innocent Children ; can any Body think this was Treason against the Monarch of the Family, if his Wife, or one of his Sons, should rescue herself, or this innocent Child, out of his Hands by force, if they could not otherwise quiet him ?

M. This supposition of Madness or Drunkenness in Fathers of Families, you B. P. P.
Sect. 47. Gentlemen of Commonwealth Principles make great use of, to justify your Doctrine of Resistance ; and I know no reason why you might not extend it as well to Anger, Lust, or any other Passion that a Man is subject to ; and have given all the World a power to judge when a Man is drunk, and mad, as well as his Wife, Children, or Servants ; nor do I know why you so much insist upon it, but because the Authors from whence you had it, are so in love with Rebellion and Disorder, that they seek and catch at every opportunity to recommend it to the World. But, I believe, had you a Wife, Child, or Servant, that should take the liberty of controuling you upon this pretence, you would be more enraged with the reason of the Resistance, than with the Resistance it self.

F. I am sorry, Sir, any thing I have said can so far transport you to passion, as to make such unkind Reflections upon your Friends ; but pray be not so hot ; is it not possible that a Master, or Father, in the State of Nature, may be mad, or drunk ?

M. Yes, and is it not possible also that the Wife may be so too ? Now suppose they should mutually charge each other with madness, or drinking too much, B. P. P.
Ibid. who shall judge betwixt them ? What horrible Confusion must this introduce into all Societies, to give Inferiors a power to judge their Superiors to be mad, or drunk ; and thereupon to resist, and oppose them with force ? But if it doth at any time happen, Wives, Children, and Servants, that are dutiful, may have ways to appease their Husbands, Fathers, or Masters, when mad, or drunk, without resisting, or fighting them ; as by getting out of the way, or by submission, prayers, and tears, which Nature hath taught them on such occasions to make use of ; and which is a thousand times a better Method, than those violent Courses you propose.

F. All I desire of you in this Conversation, is, that you would be pleased to believe, I do not argue out of any love to Rebellion, or Disorder, or that I desire to encourage it in private Families, much less to recommend it to the World ; only what I speak, is purely out of a desire of the happiness and preservation of Mankind ; and I hope I say no more, than what all sober Men will allow may be every Day practised in private Families :

And

And therefore, since you will needs have it, I do extend this Power of Resistance, not only to Madness, or Drunkenness alone, but even to Anger, Lust, or any other exorbitant Passion a Man can be subject to; and I do likewise give all the World a power to judge when such a Man is mad, or furiously passionate, as well as his Wife, Servants, or Children, if in those drunken, and mad fits, he goeth about to kill them, or any else. For I think in that Case, you will not deny, but any honest Neighbour may step in, and bind him, or hold his Hands; and so may likewise the Wife or Children themselves. As suppose, this Father, or Husband, should be so far transported with Passion, or Lust, as to go about to kill his Wife, or ravish his Daughter; I hope you will not deny, but they may lawfully resist him, if they can neither run away, nor yet pacify him by submission, prayers, or tears; which I grant are much better Methods, if they may prevail: But what if they can neither get away, nor yet any of those gentle Means you propose, can work any good upon him; what shall they do then? Can any one believe, that God hath appointed an innocent Wife, or Children, to be made a Sacrifice to the Madness, Drunkenness, Passion, or Lust of such a Father, or Husband? And as for the Case you put, where the Husband or Wife should charge each other with Madness, or drinking too much, who should judge between them? It is a meer Cavil; for as long as they fall out, and only brangle, it is no matter whether there be any Judge or not. But if it proceeds to blows, and they are like to mischief or kill each other, no doubt but the Children or Neighbours may come in and part them; and may either hold, or shut up one, or both of them, till they are sober.

M. Pray, Sir, let us leave this touchy Discourse concerning Self-defence till anon, when we shall have occasion to fall more naturally upon it. Suppose then I should at present grant you, that a Wife or Children may (in case of such extremities as may happen to them by the Madness, or Drunkenness of the Husband, or Father) restrain, or resist his violence, in case no other means can prevail; what is this to disobeying his Commands, or resisting him when he is sober? Which certainly they have no right to do. But to come as near you as possibly I can, and to let you see I am not a Man of a domineering Temper, and who approve of unnecessary Severities, or unnatural Rigours, either in Masters of Families, Husbands, or Fathers; I grant that no Father, or Master of a Family, has any right to punish, or put to death the meanest of his Slaves, much less his Children, without a sufficient cause; or that he may sell his Children, or otherwise tyrannize over them by cruel Usage, or too severe Punishments, since they are not only part of his own Substance, and to whom by the order of the Creation he gave a Being; but was also (as you well observe) ordained by God for their happiness, and preservation, as they were also (as well as his Wife) for his constant help, comfort, and subsistence; and therefore they were as much, or more, made for him, as he for them; as it is plain concerning the Wife from the Text in *Genesis*, when God said, *it is not good that the Man should be alone, I will make him an Help meet for him*, Gen. 2. 18. (*viz.*) the Woman; and therefore, as her subjection to her Husband is perpetual, as long as she lives, so likewise is that of the Children, in whom he acquireth a Property by their Education for so many Years; which I look upon as a greater obligation than their Generation; and over both whom he must in the state of Nature have an absolute Power of Life and Death; which though I grant he may happen sometimes to abuse, yet I suppose no Person living hath any right in that state to resist him in the execution of it, much less to call him to an Account, or punish him for the Male-administration of his Power. And you have granted, that the Husband in the state of Nature hath a Power of Life and Death over his Wife, if she murders her Children, or commits any other abominable Sin against Nature; and that then she may be justly cut off from the Family, and punished as an Enemy to Mankind, and so certainly may his Children too. But what need I say any more of this Subject, when you have not as yet answered my former Arguments, concerning the Absoluteness, and Perpetuity of this Conjugal Subjection, (and that which will likewise follow from it) the constant Service and Subjection of Wives and Children to their Fathers in the state of Nature. Therefore pray, Sir, let us return again to that Head, and let me hear what you have to object against those Reasons I have brought for it.

F. I beg your pardon, Sir, if I have not kept so close to the Point as I might have done; but you may thank your self for it, who brought me off from what I was going farther to say on that Head, by your Discourse of *Passive-Obedience* and *Non-Resistance*, and I know not what strange unintelligible Power of Life and Death, conferred by God on *Adam*, as a Husband, and a Father. But first, give me leave farther to prove, that this Subjection of the Wife is neither absolute, nor irrevocable. For Proof of which, I shall lay down these Principles. 1. That the Wife in the State of Nature, when she submits herself to the Power of her Husband, does it to live as happily as she did before, or rather to enjoy more of the comforts of Life, than in a single State. 2. That therefore she did not renounce either her own Happiness or Self-preservation. 3. Neither did she make him the sole and absolute Judge of the means that may conduce to these Ends: For if this were so, let him use her never so cruelly, or severely, she could have no cause to censure him, or complain in the least against him. 4. If she has not so absolutely given up her Will to his, she is still Judge when she is well used by him; or else so cruelly, that it is no longer to be endured. And therefore if such a Husband will not allow his Wife sufficient Food and Raiment, and other Necessaries; or that he uses her cruelly, by beating, or other Punishments, or hath endeavoured to take away her Life; in all these cases in the State of Nature, and where there is no Superior Power to complain, or appeal to, she may certainly quit him; and I think she is not bound to return, or cohabit with him again, until she is satisfied he is sorry for his former cruel Treatment of her, and is resolved to make amends for the future. But whether this Repentance be real or not, she only can be Judge, since she can only judge of her own Happiness, and the means of her Preservation. And the end of Matrimony being for their mutual happiness, and help to each other; if he has broke his part of the Compact, she is then so far discharged from hers, and consequently in the meer State of Nature (which is that we are now talking of) the *Vinculum Matrimonii* (as you Civilians term it) will be likewise dissolved: So likewise if such a Husband, for no just cause, or crime in the Wife, but only to be rid of her, should endeavour to take away her Life; as suppose, to strangle her in her Sleep, or the like, no doubt but she may (notwithstanding your Conjugal Subjection) resist him by force, and save her Life, until she can call in her Children, or Family, for her rescue and assistance; who sure may also, notwithstanding this absolute Despotick Power you place in their Father, or Master, rescue her from his Rage and Malice, whether he will or not: Nay they are bound to do it, unless they will be Accessaries to her Murther.

M. These are doubtful Cases at best, and do very seldom happen; and a Husband can scarce ever be supposed to be so wicked, as to hate, and destroy his own Flesh; and therefore we need not make Laws on purpose for Cases that so rarely happen.

F. Rarely happen! I see you are not very conversant at the *Old Baily*, nor at our Country Assizes; where if you please to come, you may often hear of Cases of this nature; and I wonder you that are a Civilian, and have so many Matrimonial Causes in your Spiritual Courts, brought by Wives for Separation, *propter Savitiam*, &c. should doubt whether Husbands do often use their Wives so ill, that it is not to be endured. But if the Wife have these Privileges, pray tell me, why the Children shall not have the same, according to your own Maxim of *Partus sequitur Ventrem*, since the Subjection of Children must be according to your own Principles, of the same nature with that of the Mother; and then pray what becomes of this absolute and perpetual Subjection you talk of?

M. Yet I hope you will not affirm, but that Children are under higher obligations of Duty and Obedience to their Father, than a Wife is to her Husband, with whom perhaps she may in some Cases be upon equal Terms; but Children can never be so in respect of their Father, to whom they are always inferior, and ought to be absolutely subject in the State of Nature, (that is) before Civil Laws have restrained Paternal Power.

F. I thank you, Sir, for bringing me so naturally to the other Head I was coming to, and I agree with you in your other Maxim, of *Quicquid ex me & uxore mea nascitur in potestate mea est*, yet not in your Sense: For if I should grant, that the Father's Power over the Child commences from his Power over the Mother, by her becoming his Wife, and submitting herself, and consequently all

the Issue that should be begotten of her, to her Husband's Power; yet as I have prov'd already in case of the Wife, so I think I may affirm the same in that of the Children, that they are not deliver'd by God so absolutely to the Father's Will, or Disposal, as that they have no Right, when they attain to Years of discretion, to seek their own Happiness and Preservation in another place, in case the Father uses them as Slaves, or else goes about to take away their Lives without any just cause; since when Children are at those Years, I think they are by the Laws of Nature, sufficient Judges of their own Happiness, or Misery, that is, whether they are well, or ill used; and whether their Lives are in danger, or not, by their Father's Cruelty.

For tho' I grant that Children, considered as such, are always inferior to their Parents; yet I must likewise affirm, that in another respect, as they are Men, and make a part of that great aggregate Body of Mankind, they are in all Points equal to them; that is, as the Parents have a right to Life, Happiness, and Self-preservation, so have they likewise; and consequently to all necessary means thereunto, such as Food, Cloaths, Liberty, (I mean from being used as Slaves) which Principles, if true, will likewise serve for a farther Proof against that absolute Property, and Dominion, you supposed to be conferred on *Adam* over the Earth, and all things therein, exclusive to that of his Wife and Children. For if they had a Right to a Being and Self-preservation, whether he would or not, so had they likewise to all the means necessary thereunto; and he was not only obliged to provide Food and Raiment for his Children, whilst they were unable to do it for themselves, but also when they grew up to years of discretion, they might take it without his Assignment, and this by virtue of that Grant in *Genesis* I before quoted; *And God said, Gen. 1. (viz. to the Man and the Woman, and in them to all Mankind, then in their Loins) Behold, I have given you every Herb bearing Seed, which is upon the face of the Earth, &c. Behold, to you it shall be for Meat.* So that sure you were too rash, in affirming with Sir R. F. that a Son, a Slave, and a Servant, were all one at the first: For I hope I have proved, the Father doth not acquire any absolute Property in the Person of the Son, either by his begetting him, or bringing him up; for then I grant, a Son and a Slave would be all one. But if you please better to consider it, you will find, that Fathers were never ordained by God for perpetual Lords and Masters over their Children, but rather as Tutors and Guardians, till they are of Years of discretion, and able to shift for themselves; God having designed the Father to beget and bring up his Child, not for his own interest or advantage only, but rather for the Child's happiness and preservation, which by the Laws of God and Nature he is bound to procure: For as it is the Son's Duty never to do any Action, that may make his Father repent his begetting, or bringing him up; so on the other side, the Father ought not to treat his Son so severely, as to make him weary of his Family, much less of his Life. It is the Apostle's Precept, *Ephes. 6. 4. Parents provoke not your Children to wrath*; which certainly he knew they were apt to do, or else that Precept had been needless. Now pray tell me, if *Adam* had used one of his Sons (whom he loved worse than the rest) so cruelly, as to make him a Slave instead of a Son, and when grown a Man, should have put him to all the servile and hard Labour imaginable, with scarce Victuals enough to live upon, or Cloaths to cover him; what must this Son have done? born all patiently? Or else do you think it had been a damnable Sin, if he had fled into the Land of *Nod*, to *Cain* his elder Brother?

B. P. P.
c. 2. Sect. 9.

M. To answer your question, I think in the first place it had; for I do not only take *Cain* to have been the first Murderer, but Rebel too: And in the next place this Question is needless; for it can scarce be supposed, that ever *Adam*, or any Father can be so wicked and ill-natured, as to use a Son thus cruelly, without some just occasion; but if he had, I think he ought to have endured any thing from his Father, rather than have left him without his leave, since I cannot see how Children can ever set themselves free from their Father's Power, whether they will or no.

F. If that be the condition of Children, they are then, instead of Sons; as absolute Slaves as any in *Turkey*, whenever their Father pleases. But you have already granted, that Fathers ought not to use their Children like Slaves, nor to sell them for such to others; and tho' I have no great kindness for *Cain*, yet I know not what warrant you have to call him Rebel: I am sure neither the Scripture, nor *Josephus*, mention his going to the Land of *Nod*, as an offence
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committed against his King and Father, *Adam* ; but rather as a piece of Compliance or Obedience to God's Sentence, who had made it part of his Curse so to do.

M. I shall not much trouble my self whether *Cain* was a Rebel or not ; I only tell you what some Learned Men have thought of his quitting his Country ; but as for other Children, tho' I grant their Fathers ought not to use them like Slaves, yet if they should happen to do so, I think such Children ought to bear it as a Judgment inflicted by God for their Sins, and should not by any means set themselves free, tho' their Fathers use them never so severely ; since it is God's Will they should be born, and continue under the Power of such severe Fathers.

F. But pray, Sir, tell me : What if this Son had fallen into the power of a Stranger who would thus make a Slave of him, was he likewise bound to bear this as a Punishment from God for his Sins, and might he by no means set himself free ? since this could not happen without God's permissive Providence at least ; and I think you will scarce prove it more in the Case of the Father, unless you will allow God to be the Author of Tyranny and Oppression.

M. I grant, that a Man that is made a Slave to a Stranger by force, without just cause given by him, may set himself free by what means he can ; but I deny he hath the same Liberty in respect of his Father, since the Father's Power over him is from God, and so is not the Stranger's.

F. What Power of the Father do you mean ? that of making his Son a Slave ; or of using him as a Father ought to use a Son ? The latter of these I very well understand to be from God, but not the former : And if the Father hath no such Power from God, I cannot see how it can be any Act of Disobedience in a Son to look to his own Liberty and Preservation ; since Cruelty and Tyranny can never be Prerogatives of Paternal Power, as you your self confess.

M. I grant, indeed, a Father hath no such Power from God to treat his Son thus cruelly ; but if he does, I say again, that God having ordained the Son to be absolutely subject to his Father, he must endure it, let the consequence of it be what it will : And I suppose you will not deny, but that in case of necessity, as when a Father hath not wherewithal to nourish and breed up his Children, he may sell or assign his Interest in them to any Person, who will undertake to provide for their Nourishment and Education ; and that the Children so sold, or assigned, do thereby become absolute Servants to the Person to whom they were thus assigned as long as they lived ; and why this should be their Condition in respect of a Stranger, and not so to their Father, I can see no reason, since their Father would have been at as much trouble and charge for their Education as the Stranger.

F. I so far go along with you, that in case of such necessity as you mention, a Father may sell or assign the present Interest in his Child to a Stranger : yet I cannot see any reason that this Sale, or Assignment, should confer so absolute a Property in the Person of this Child, as that therefore he should be a Slave to this Master, or Fosterer, as long as he lived : Since admitting that the Father, or other Person who takes upon him that Care, may perhaps justly claim a Right in the Service or Labour of the Child, to satisfy them for their trouble and charge in bringing him up ; yet it doth not therefore follow, that this Service is due as long as the Child lives, but rather until such time as they can make their Labour satisfy them for their charge and trouble in keeping him, which may very well be by that time the Child attains to twenty five Years of Age at farthest : And there are those that have offered to breed up and maintain all the Foundlings and Bastard Children in *England*, if they may be bound to serve them until about that Age. So that I see no reason why a few Years of Education should give any Man a Right over another's Person as long as he lived.

But if you urge, that the Child owed his Life to his Father, or Fosterer, since without his assistance he must have perished, and therefore the Service of the Child's whole Life is but little enough to recompence it : To this I answer, That the Parents are under an absolute Obligation, by the Laws of God and Nature, to breed up their Child, and they sin, if they do not perform it as they ought ; the end of a Father being chiefly for the breeding up and preservation of the Child ; and therefore there is no reason he should acquire such a Property in him, merely because he did his Duty : And the Duty of a Father being to better the Condition of his Son, and not to make it worse, I doubt whether an absolute and perpetual

Servitude, or Death it self, were the better bargain. And if this Right will not hold for the Father himself, much less will it for a Fosterer, since he is likewise obliged by the Laws of Nature and common Humanity, as well as by his Contract with the Father, to breed up this Child so assigned him; and not to let him perish, if he be able to breed him up. Nor ought this Father's or Fosterer's temporal Advantage, which he may make of this Child, to be the principal end of his Undertaking; but the doing good to Mankind, and the Advantage he may reap thereby, is to be considered only as an Encouragement, and not as the only Motive to this Duty, since he is obliged to do the same thing, tho' he were sure the Child would either die or be taken away from him, before he could be with him half long enough to satisfy him for his Charge.

Neither doth this Reason hold true, even according to the Scripture Rules of Gratitude, that a Man hath a Right to exact, of one to whom he hath done a Courtesy, or bestowed a Benefit, a Return as great as the Benefit bestowed; since this were not Beneficence, but meer Bartering or Exchange; and a Man who had his Life saved by another's assistance (suppose by pulling him out of the Water) must be obliged by this Principle to submit his Life to his disposal ever after. And therefore I desire you would give me some better Reasons, why such a Son ought to be so absolutely subject to his Father's Power, as that it is not lawful for him, upon any account whatsoever, to free himself from it, let his Father use him never so cruelly or severely.

M. Well, Sir, since you desire it, I will give you the best Reasons I have, why God cannot permit so unreasonable a Liberty as this would give to all Children, in case they should make use of it whenever they thought fit; and therefore God hath ordained it thus, to take away all those Pretences of Undutifulness and Disobedience, which Children might make, should they be permitted to be their own Judges, when they might quit their Father's Family without his leave; which Pretence of cruel Usage they would be sure to make use of, thereby to leave their Parents upon every slight occasion, saying, that their Fathers were so cruel and severe, that there was no living with them any longer; when indeed it was not so, but on the contrary, no just Cause of Complaint against them, more than bare correcting them for their Faults: And so the Father might be bereft of some, nay all his Children, who should be helpful and serviceable to him in his old Age, which would breed great Confusion and Inconveniences in Families, especially in the State of Nature; as in the Case you have put concerning *Adam's* Sons, they being the only Servants he could have to make use of on all Occasions.

F. I desire you in the first place to take notice, that I put this Case concerning *Adam* by way of Supposition only; not but that I have a better Opinion of our first Parent (notwithstanding his Fall) than to believe him so ill-natur'd, or that he was ever so cruel as to use his Children thus hardly. But in this depraved State of Nature such unnatural Rigors and Cruelties in Fathers, as well as Disobedience in Children, is but too frequent; which no Man needs to doubt of, that will but consult the Custom of divers Nations in *Africa*, and other Countries, at this day; where they sell their Sons for Slaves, and exercise this Fatherly Power with the greatest Tyranny and Rigor, using them as Slaves, or selling them to others for such things as they want. And if you think it against the Law of Nature for such Children, when they see themselves ready to be sold to work in the Mines in *Pern*, or Sugar-works at *Barbadoes*, to run away into another Country to avoid such a Condition, which is as bad or worse than Death, you may enjoy your own Opinion; but I am sure you'll have but few Profelytes, but such as are of the like arbitrary Principles. And as for your Pretence, that if Children should be allowed to judge when their Fathers treated them too severely, or like Slaves, they would all run away; that is but a Subterfuge: For first, it is a needless Caution, Children being, when young, not apt to leave their Parents who have bred them up, upon whom they depend for their Subsistence, and to whom, if they are treated like Children, they seldom fail to bear a natural Duty and Affection; and if well used, they will, when of Years of Discretion, be likewise willing to stay with them, and look after them when sick or old; not only for Duty, but also for their own advantage, and in hopes of having a share in what Goods or Estates they may leave behind them when they die. But if, when they come to Years of discretion, they can better their condition by marrying, and leaving their Father's Family, their Parents are bound in conscience to let them go; since it

it is their Duty to better the Condition of their Children, and not to make it worse: Always provided that such Children either take care of their Parents themselves, or else hire others to do it for them, in case they want their Assistance by reason of their old Age, Poverty, or Sickness. But if Children may not quit their Father's Families, tho' they are never so hardly or severely dealt with, the consequence will be, that Fathers may keep their Children as Slaves as long as they live, tho' it were to a hundred Years, or else may sell them to others, to be used worse, if possible; the Absurdity of which Assertions, and how contrary to the common Good of Mankind, I might leave to any indifferent Person to judge of.

Therefore, I think, I may very well (according to the Learned *Grotius*) divide the Lives of Children into *three Periods* of Ages. The *first* is the Period of Infancy or imperfect Judgment, before the Child comes to be able to exercise his Reason. The *second* is the Period of perfect Judgment or Discretion, yet whilst the Child continues still part of his Father's Family. The *third* is, after he hath left his Father's, and enter'd into another Family, or sets up a Family himself. In the *first Period*, all the Actions of Children are under the absolute Government of their Parents: For since they have not the Use of Reason, nor are able to judge what is good or bad for themselves, they could not grow up nor be preserv'd, unless their Parents judg'd for them what means best conduced to this end; yet this Power is still to be directed to the principal End, *viz.* the Good and Preservation of the Child. In the *second Period*, when they are of mature Judgment, yet continue part of their Father's Family, they are still under their Father's Command, and ought to be obedient to it in all Actions which tend to the Good of their Father's Family and Concerns. And in both these Ages I allow the Father has a Right to make his Children work, as well to enable them to get their own Living, as also to recompence himself for the pains and care he has taken, and the charge he may have been at in their Education; and also to correct them, in case they refuse to work or obey his Commands. But in other Actions the Children have a Power of acting freely, yet still with a respect of gratifying and pleasing their Parents, to whom they are oblig'd for their Being and Education; since without their care they could not have attain'd to that Age. But this Duty being not by force of any absolute Subjection, but only of Piety, Gratitude and Obedience, it does not make void any Act, tho' done contrary to their Duty. The *third and last Period* is, when the Son, being of Years of discretion, either by Marriage or otherwise is separated from his Father's Family: In which case he is in all Actions free, and at his own disposal, tho' still with respect to those Duties of Piety and Obedience, which such a Son must always owe his Father, the Cause thereof being perpetual.

M. I must beg your pardon if I cannot come over to your Opinion, notwithstanding all you have said in this long Discourse; since I cannot conceive how in any case Children can naturally have a Power or moral Faculty of doing what they will without their Parents Leave, since they are always bound to study to please them: And tho', by the Laws of some Nations, Children when they attain to Years of Discretion have a Power and Liberty in many Actions; yet this Liberty is granted them by positive and humane Laws only, which are made by the Supreme Fatherly Power of Princes, who can regulate, limit, or assume the Authority of inferior Fathers, for the publick Benefit of the Commonwealth. So that naturally the Power of Parents over their Children never ceases by any Separations, tho', by the permission of the transcendent Fatherly Power of the Supreme Prince, Children may be dispens'd with or privileged in some cases from Obedience to subordinate Parents.

F. And I must beg your pardon, Sir, if I cannot alter my Opinion in this matter, for all that you have now said, since you can give me no better Reasons than what you did at first: And tho' you say, you cannot conceive how Children can ever in any case have a Power or moral Faculty of doing what they will without their Parents Leave, yet they may have such Power in many cases, whether you can conceive it or no. For tho' I do grant, that Children are always bound to study to please their Parents, yet doth not this Duty of Gratitude or Complacency include a full and perfect Dominion of Fathers, in the State of Nature, over the Persons of their Children, and an absolute Power over them in all cases whatsoever, so that the Children can have no Right to consult their own Good or Preservation,

servation, however it may be endangered by their Father's Passion or ill Nature : Since a Wife is always obliged to this Duty of Complacency to her Husband ; yet is not this so absolute, but that in the State of Nature she may quit his Family in those Cases I have already mentioned, and against which you had nothing to object. And I deny your Position, that Children, when they attain to Years of Discretion, derive that Power and Liberty they use in many Actions from positive Humane Laws only ; or that the Power which Parents naturally have over their Children can never cease by any Separation, but only by the permission of the Father.

For as for *Bodin*, and divers others that have written on this Subject, they do no more than follow others, who have asserted this absolute Power of Fathers upon no better grounds than the Civil or *Roman* Municipal Laws, without ever troubling themselves to look into the true Original of Paternal Authority or Filial Subjection, according to the Laws of Reason or Nature. And most Treatises of this Subject being commonly writ by Fathers, no wonder if they have been very exact in setting forth their own Power over their Children, but have said little or nothing of the Rights of Children in the State of Nature ; and therefore I shall farther let you see, that this Duty of Children, even of pleasing or obeying their Parents, can only extend to such things as they may reasonably or lawfully command. For suppose that *Adam* had commanded some of his Sons or Daughters never to marry, you cannot deny but this Command had been void (that being the only means then appointed to propagate Mankind :) For when there then lay a higher Obligation upon them to increase and multiply than there is now, they might then certainly have chosen Wives for themselves, when they were of Years of discretion, and capable of Marriage.

And farther to shew you, that Children may in some Cases separate themselves from their Father's Family and Subjection, without their Father's Consent, is apparent as to the Daughters, who if they were at first obliged by this Precept to marry, might likewise do it whether he would or not, and were to be obedient to their Husbands when they were married, the Obedience which they before owed to their Father being now transferred to their Husband ; or else they must serve two Masters, which is against our Saviour's Rule. By which it appears, that the Subjection of Daughters in the State of Nature is not perpetual : And to prove that Sons have a like Right to separate from their Father's Family, let us suppose that *Adam* had been so cruel and unnatural as some Fathers are ; that being only sensible of the Profit he received from his Sons Labours, he would never have permitted them to leave his Family, nor to enjoy any thing of their own, but would have kept them like Slaves as long as they lived : If you affirm, that he might have done so if he had pleased, and that the Sons had no lawful means to help themselves, since he only was Judge whether ever he thought fit to set them free or not ; you your self have already granted the contrary, when you affirmed, that a Father had no Right to sell his Child as a Slave ; and then sure he can have as little Right to use him so himself.

But as for what you say against that natural Equality of Children to their Parents, considered as Men, you might easily have understood it, if your Thoughts were not so wholly taken up with this transcendent imaginary Empire of Fathers in the State of Nature, as if they were somewhat more than Men : For pray tell me, are they not equal, who have the same Right from God to the same things ? For if Fathers have a Right to live and be preserved, so likewise have the Children ; and if they have a Right to the End, they have likewise the same to the Means necessary thereunto, such as are Food, Raiment, Freedom from Slavery, &c. And if they are thus equal, they must likewise, when they attain to Years of discretion, be endued with a Power of judging for themselves, concerning what things are necessary to their Happiness and Preservation, and what tends to their Misery or Destruction ; and consequently may very well judge whether their Fathers treat them kindly or cruelly : For if the Father in the State of Nature is the sole Judge of the Means that conduce to his Son's Happiness and Preservation, without his Consent he may determine, that Poverty, Slavery, and Torment, shall be fit Means, and conducing to this End, which is against Sense and Reason. And tho' I grant, that Sons may sometimes be mistaken in the true Means that may lead to these great Ends of Life ; yet doth not this take away their Right of judging for themselves, any more than it doth the same Right from their Fathers, who as Men are also liable to the like Mistakes. Neither did any Slave or Subject
ever

ever give up his Will so totally to his Master or Monarch, as absolutely to renounce all Right to Happiness and Self-preservation, or to the Means that may conduce thereunto. But I think we have sufficiently debated this great Point of the natural Power of Fathers over their Children : And therefore

Let us in the next place consider, whether Children may not upon these Principles in some cases make use also of Self-defence, even against their Fathers, if they cannot otherwise avoid certain Ruin and Destruction : Therefore I will first ask you what you think of this Case ? A Son in the State of Nature being separated from his Father's Family, and having Children and House of his own, what shall he do in case his Father, by the evil Suggestions of a Stepmother, or other wicked Persons, be so far incensed against his Son, as to send Men to burn his House, plunder him of his Goods, and destroy his Plantation ?

M. If the Son be absolutely set free from his Father's Family and Power with his consent, I do not deny but that such a Son may resist those Persons his Father sends to ruin him and his Family, and may repel their Violence by force ; but I do not allow the Son the same Power to resist the Person of the Father, if he should come himself thus to destroy him.

F. Why so ? Do you think a Father, by being so, hath any greater Right to destroy his Son and ruin his Family than a Stranger ?

M. No ; but because the Person of a Father ought always to be esteemed by the Son as sacred as his natural Prince ; and if he should have a Right to resist his Father by force, he might happen to kill him in the Scuffle, which would be a Sin against Nature.

F. Well, suppose the worst, would this be more a Sin against Nature, than to suffer himself, Wife, and innocent Children, to be turned out of all they have, and left to perish by Hunger and Cold ? St. Paul says, *That he that doth not provide for his Family is worse than an Infidel* ; and, I think, so would the Son be, if, for fear of hurting his Father's Person, he should permit all his Family to be exposed to certain Beggary and Ruin.

M. This Precept of St. Paul obliges only, when a Man may provide for his Family by lawful means, but not when it cannot be procured but by doing what is unlawful, as I take this Resistance of the Person of the Father to be.

F. I grant indeed that a Father, acting as such, is not to be resisted, even when he corrects his Son ; but I suppose you will not say, that in the case I put he acts as a Father, but an Enemy, when he goeth about without any just Occasion to kill or ruin him ; unless you can suppose, that the Will to preserve and destroy can consist together in the same Subject : Neither can you affirm, that the Father hath any Right to deal thus wickedly and violently towards his Son and his innocent Family. By what Law then must the Son be obliged to sacrifice his own Life, and that of Wife and Children, and all that he hath, to this imaginary Duty ?

M. There seems to me two good Reasons for it : The first is that Gratitude which the Son must always owe his Father for his Being and Education ; and therefore if he give up his Wife, Children, and all that he hath to his Will, it would scarce be a sufficient Requit for all the Benefits he hath received from him. The second is, because no Circumstances whatsoever can take off or obliterate this Relation : And tho' tis true your Father, whilst acting thus, doth not deal with you as a Father, but an Enemy ; yet he is still your Father, and you are and will be always his Son, do what you can, and so consequently you will still owe him Subjection. For it is a Maxim not only of the Civil Law, but that of Nature too, and this most of all in the State of Nature, that is, before Civil Laws had restrained the Paternal Power, *Jura sanguinis nullo delicto dirimi possunt* ; and lastly from the fourth Commandment of, *Honour thy Father, &c.* Now no Man can render Honour to him whom he goeth about to resist, and so may also destroy.

F. I confess you have urged this Argument as home as the thing will bear ; but yet I think I can shew you, that the Son is so far from acting against the Law of Nature in thus resisting his Father, that I think he would rather transgress it, if he acted otherwise. But first to answer your Arguments, I deny that either Generation or Education do confer so great a Benefit, that a Man is obliged to sacrifice himself, his Wife, and Children, and all that he hath, in return for it.

First for Generation : I suppose you will not much insist on that, since you must grant that a Father doth not act in that matter as a voluntary, but natural Agent ; neither is it in his power to hinder the Child that he gets from being conceived or born ; neither did he get him so much to propagate his Species, as to gratify his own present natural Appetite.

Then for Education, which I grant is much the greater Obligation, since by the former I am only born an irrational helpless Creature, but by the other I am made a reasonable Man, able to help and provide for my self, and knowing my Duty to God and other Men ; yet even these Obligations are not great enough to make me sacrifice my self and all that I have to his Fury or Humour. I grant indeed, that if it were to save a kind Father's Life, a Son may be obliged to venture, nay lay down his Life to perform it ; but I deny, that even for such a Father he hath a Right to give up the Lives of others, which are not at his disposal (as those of his Wife and Children are not) in this case. For this were not only to return more than was first given, but also to pay Debts with that which is not my own ; and to give up their Lives, and let my Father take them away, is all one, if I can hinder it : *Qui non prohibet, facit.* Then as for the Relation of a Father, which you say no Fault of his can obliterate or destroy, you must grant that it may be suspended for a time : As, when a Man binds or resists his mad or drunken Father, who would kill him or his Wife or Children, he doth not do it to the Father, but to the mad Man or Drunkard ; and so likewise in this case, he doth not resist his Father, but a furious unreasonable Creature, who is so far from behaving himself as becomes a Father, that he doth not act like a Man. Nor doth your Maxim hold true in all Cases, and therefore is no Law of Nature ; for *Jura sanguinis aliquo delicto dirimi possunt*, or else a Father could never put his Son to death for any Crime whatever, which you have affirmed he may : But certainly when he acts thus, it is not as a Father, nor doth he destroy him as a Son, but an Enemy or Malefactor.

Now I desire you or any indifferent Man to consider, since the common Good of Mankind is the Sum of all the Laws of Nature, and the great Rule by which they are to be tried, which Rule is to be preferred, and conduces more thereunto, when they cannot consist at once or together : That a Father, who by your own confession comes to do an unlawful wicked Action, *viz.* to ruin and destroy his Son, with his Wife and Children, should be resisted, and consequently one Man's Life put in hazard ; than that many innocent Persons should be ruined, and perhaps starved to death for want of Food and Shelter. And as for the fifth Commandment, that extends no more to the Father than to the Mother ; tho' you are pleased to leave her out, because it makes against your Opinion : And therefore if by *honour* is meant, *Thou shalt not resist* ; then no Man should resist his Mother any more than his Father, if she went about to kill him ; and yet not the Mother, but the Father, is by your Hypothesis the natural Monarch, that hath this Power of Life and Death over the Son. But let us pursue this Point no farther ; if you will not be convinced, I cannot help it.

But pray tell me now, what a Son must do, if his Father, transported by Fury and Malice, should go about to kill him with a Sword or other Weapon, and that he hath no other way left to save his Life, neither by Intreaty nor Flight (which I grant ought to be done if possible) whether he may resist his Father with what next comes to hand, or suffer himself to be killed ?

M. I am much better satisfied in this case than in the other, that he ought rather to let his Father take away his Life than resist him, since here is but one Life to be lost ; whereas, I confess, the other Case was harder, because there were more Lives concerned than the Son's ; and I am of this opinion partly for the same Reasons as before, and partly because 'tis more suitable both to Reason and the Law of Nature, as also to Holy Scripture, Precepts and Examples : For if St. Peter command *Servants to be subject to their Masters*, &c. not only to the Good and Gentle, but also to the Froward ; and if Servants, much more Sons, who owe their Fathers a higher Duty and Obedience than Servants can owe their Masters ; and Isaac was so far convinced that his Father Abraham had Power over his Life, that tho' he was a lusty young Man, and could carry Wood enough to consume a Burnt-offering, yet do we not find that he offered in the least to resist his Father, when he was about to bind him to be sacrificed : For he very well knew, that his Father could not be resisted without endangering his Life, if not taking it away

in the Scuffle. And sure you will grant, that a Son ought rather of the two to let his Father kill him, than he take away his Life, by whose means he received his own; especially since *Abraham* was the Master of a great Family, and in whose Life and Well-being not only his Mother, but all the Family, had an Interest, as necessary for their Well-being and Happiness. Nor can I think, that *Abraham* would have so readily assented to God's Command for the doing of it, had he not been already satisfied, that he had an unaccountable Power of Life and Death over his Son by the Laws of God and Nature.

F. In the first place to answer your Authorities from Scripture; as for that Place of *St. Peter* you have cited, it is not a Precept given by the Apostle to Sons, but to Servants or Slaves, whose Lives and all that they had were at their Masters absolute disposal, being those whom the Apostle *Paul* calls, *Servants under the Yoke*; and unless you will make a Slave and a Son to be all one (which you have already denied) this Precept doth not at all concern them. And as for the Example of *Isaac*, that will make as little for your advantage; for first, as to *Abraham*, he could not but know, that to kill his Son without any just Cause, was as much Murder in him as in any other Man. Now what could be a juster or a higher Cause than God's particular Command? So that as this Act of *Abraham* is not to be taken as an Example by other Fathers, so neither doth the Example of *Isaac* oblige other Sons to the like Submission; therefore it is most reasonable to suppose, that *Isaac* being then (as Chronologers make him to be) about nineteen or twenty P. 34. 1. 27. Years of age, and of Years of discretion to ask, where was the Lamb for the Burnt-offering, was also instructed by his Father, before he came to be offered, of the reason of his dealing thus with him; and then the Submission was not payed to his Father's, but to God's Will, from whom he miraculously received his Being. But if any Man doubt whether Resistance in such a case were lawful, I leave it to his own Conscience to consider, whether, if his Father had him alone in a Place where he could neither run away, nor yet call for Help, he would suffer his Father to cut his Throat without any Resistance, only because he pretended Divine Revelation for it. Not but that I so far agree with you likewise, as to limit such a Resistance only to the holding his Father's Hands, or warding off his Blows, but not to the taking away his Life; but of the two, rather to lose his own than to kill him, for the Reasons you have given, and which I will not deny: But yet if the Father be mad, I doubt whether the Son is bound to let him kill him rather than take away his Life, since such a Father's Life is no way useful to the Good of the Family. So that tho' I should grant that Paternal Power is from God, and consequently irresistible, yet doth it not follow, that all the unjust Force or Violence, which a Father as a Man may use against his Son's Life or Fortune, is such part of a Paternal Power, as God hath commanded us not to resist; since you your self must grant, that he doth not thus act (in going about to kill his Son) as a Father, but a violent and wicked Man: So that where the Father hath no Right to take away his Son's Life, I think in all such Cases the Right of the Son to resist him doth take place. And if a Man may resist or bind his Father, when he is mad or drunk, and in such Fits goeth about to kill him, I can see nothing to the contrary why he may not do the same thing, when his Father is transported by a sudden Rage or unreasonable Malice; since both of them do take away the Use of natural Reason, as much the one as the other, according to that Saying of the Poet, *Ira furor brevis est*, Anger is but a short Madness: Fury and Malice being alike fatal and destructive to the Son's Life and Safety with Drunkenness and Madness; nor doth such a Son resist his Paternal Power, but only his brutish Force and Violence. So that if Sons (when grown to Years of discretion) have not a Right to defend their Lives, in the State of Nature, against all Persons whatsoever, who go about to take it away without any just Cause; every Son ought to suffer his Father to kill him, whenever, being transported by Madness, Drunkenness, or sudden Passion, he hath a Will so to do: Which how it can consist with that great Law of Nature, of propagating and preserving the Species of Mankind, if a Father should have such an unreasonable unlimited Power, I'll leave to your self or any other reasonable Man to consider. Nor doth it follow, that because a Son can in no wise be superior to his Father, he ought not therefore to resist him; since tho' I grant Punishment is a Right of Superiors over their Inferiors, yet so is not Resistance; P. 35. 11. since every one knows that Resistance is exercised between Equals, as I have already proved Sons are to their Fathers, in all the Rights of Life and Self-
G preservation;

preservation ; and consequently to judge when their Lives and Estates are unjustly invaded.

M. I must confess I am in a great doubt which will most conduce to that great Law you mention (which I grant to be the Sum of all the Laws of Nature) *viz.* of preserving or prosecuting the common Good of Mankind ; that Fathers should have an absolute irresistible Power over the Lives and Fortunes of their Children, let them use it how they will ; or else that Children should have a Right to resist them, in some cases, when they go about to take away either of them without any just Cause : For tho' I own, that (if the former Principle be true) Parents may be sometimes tempted to take away their Children's Lives or Estates without any just Cause ; so on the other side, if Children shall assume such a Power to themselves of judging when their Fathers do thus go about to invade either their Lives or Estates, it will (I doubt) lay a Foundation for horrid Confusions and Divisions in Families ; since, if Children are under a constant Subjection to their Fathers, they ought then to be absolutely subject to them in the State of Nature, and therefore ought never to be resisted : For if all Fathers, and Masters of Families, are trusted by God with an absolute Power of Life and Death over the Wife, Children, and Servants of the Family, as your self cannot deny ; then no Resistance of this absolute Power can subsist with the Peace and Tranquility of that Family, without the Diminution or total Destruction of that absolute Power, with which they are entrusted.

And tho' I admit that Parents ought neither to use nor sell their Children for Slaves, nor to take away either their Lives or Goods, without great and sufficient Cause ; yet of these Causes Fathers, in the State of Nature, must be the only and uncontrollable Judges : Since, if Children (whom I still consider as Subjects, tho' not as Slaves, in this State, as long as they continue Members of their Fathers Family) should once have a Right to resist, when they thought their Lives or Estates were unjustly invaded ; they might also oftentimes, through Undutifulness or false Suggestions, pretend or suppose that their Fathers were mad, drunk, or in a Passion, and went about to take away their Lives, when really they intend no such thing, but only to give them due Correction : Which would give Children an unnatural Power of resisting, or perhaps of killing their Fathers, upon false Surmises or slight Occasions.

And as this would introduce great Mischief and Confusion in private Families, so would it likewise prove a Foundation of Rebellion against all Civil Powers whatsoever ; if Subjects, who are the same thing in a Kingdom that Children are in a Family (in the State of Nature) should take upon them to resist their Prince whenever they think he goeth about to invade either their Lives or Fortunes, which would likewise serve to justify all the most horrid Rebellions in the World ; since all Rebels whatsoever may or do pretend, that their Lives, Liberties and Fortunes are unjustly invaded, when indeed they are not ; and likewise upon the least Hardship or Injustice in this kind inflicted upon any private Subject, either by the Prince or his Ministers (which Abuses and Violences do often happen even under the best Governments) any such private Person, who shall think himself thus injured, may upon this Principle take up Arms, and endeavour to right or defend himself against such Violence ; by which means, under pretence of securing a few Men in their Lives or Estates, whole Kingdoms (if such Persons can find Followers enough) may be cast into all the Mischiefs and Confusions of a Civil War, till the Prince and Government be quite destroyed.

F. I must confess, the Arguments you now bring are the best you have yet produced, since they are drawn from that great and certain Law of procuring the common Good and Peace of Mankind. But I hope I shall make it plain to you, that no such terrible Consequences will follow from the Principles I have already laid down ; and therefore I must first take notice, that you have in your Answer confounded two Powers together, which ought to be distinguished in the State of Nature, *viz.* the Power which Fathers, as Masters or Heads of Families, may exercise over the Lives of their Children or Servants, whilst they remain Members of their Family, and that Reverence and Duty which Children must always owe their Fathers as long as they live, even after they become Fathers or Masters of Families of their own. In the first State, I have already allowed, that such Fathers, as Masters of Families, may lawfully exercise a far greater Power over their Children, whilst they are Members of their Family, than they can when they

they are separated from it, yet is not this Power in all Cases absolute or irresistible, as I have already proved; and therefore I do in the first place restrain this Right of self defence only to such Cases where a Father would take away a Son's Life in a fit of Drunkenness, Madness, or sudden Passion, without any crime committed, or just cause given: Which I also limit to a bare self defence, without injuring or taking away the Life of the Father if it can possibly be avoided; and in this Case, if the Son, who is like to suffer this violence, may not judge when his Life is really in danger to be destroyed, because he may pretend so when really it is not. This is no just reason to overthrow so great a Right as self preservation; since if this were a sufficient Objection, it would have the same force against all self defence whatsoever: For it doth often happen that wicked and unreasonable Men will pretend that they were forced to take away the Lives of others, only to preserve their own, when indeed it was altogether false and needless, and they only killed them to satisfy their own Malice or Passion. And therefore, as there is no reason that the abuse of this natural Right should be used as an Argument against the use of all self defence, by any Man whatsoever; so likewise neither ought the like abuse thereof by some wicked Children to be brought as an Argument against its being made use of at all by others, who are never so unjustly assaulted, and in danger of their Lives from their Fathers violence. If the first Principle be true, (on which this is founded) that a Son may exercise this Right of self defence in such Cases, without any intrenchment upon his Father's Paternal Authority, or that Filial duty and respect which he must always owe him whenever he returns to himself, and will behave himself towards him as becomes a Father, and not like an Enemy or Cut-throat.

And as for the Quarrels and Confusions, which you alledge may happen in Families between Fathers and Children, in case such a liberty should be allowed, those inconveniences will prove very inconsiderable, if you please to take Notice: That, first, I do not allow this Right of Resistance to be exercised by any Children before they attain to years of discretion. Secondly, that after they have attained to these Years, no Resistance ought to be made against a Father, whilst they remain part of their Father's Family, but only in defence of their own, their Mothers, Wives, and Children's Lives; since I grant, that a Son as long as he continues a Member of his Father's Family, ought to bestow all his own labour for his Father's profit, and cannot acquire any Property either in Lands or Goods without his Father's consent: And since you conceive this Right of self defence, if allowed to Children, would be the cause of so great mischiefs in Families, if Children should have any Right to judge when their Fathers abused their Power over them; let us a little consider on which side this abuse is most likely to happen; for if you please but to look into the World, and survey the Nature of Fathers and Children, and set the faults of the one against the other, you will find, that (as I confess) it is the Nature of many Children to contradict and disobey their Fathers Commands, and that most young People hate restraint, and love too much liberty, and may oftentimes think their Fathers too harsh or severe to them, when they really are not; yet doth such false Surmises and disobedient Actions seldom end, either in absolute Resistance, or taking away their Fathers Lives by force; or if they do so, it is really done for their own defence, or whilst they are assaulted by them in their own Lives, or those of their Children; but is commonly acted privately, to satisfy their own revenge or malice, which I hold to be utterly unlawful: So likewise let us consider on the other side, those temptations that Fathers lie under of injuring their Children, or taking away their Lives, or using them like Slaves, without any just Cause; you'll find that they, by reason of their Age, natural Temper or Infirmities, may be easily transported to that degree of Passion, that not considering the Follies of Youth, they may oftentimes, in their Passion, either beat them so cruelly, as utterly to disable or maim them, or else take away their Lives for little or no Cause. And besides, Fathers being often covetous and ill natured, (which are the Vices of old Age) may (where there is no Power over them to restrain them from it) either keep them as Slaves themselves, or else sell them to others for that purpose, (as I have already given you an Example of the Negroes in *Africa*) and which of these two inconveniences are most likely to happen between Children and Parents in the State of Nature, I should leave to any indifferent Man to judge between

P. n. M:
p. 41.

us. And therefore I think, it more conduces to the good and peace of Families, and consequently the happiness and preservation of Mankind, (which are the end of all Laws) that Children should be allowed these Rights (I have already laid down) of asserting their natural Liberty from Slavery; and defending their Lives, and those of their Wives and Children, from the unjust Violence of their Fathers, than that they should be left wholly at their Disposal to be maimed, killed or ruined, whenever their Covetousness, Passion or Malice may prompt them to it: Since if all Fathers were satisfied that their Children have a Right thus to defend themselves in these Cases against their unjust Violence, it would be a means to make them act more cautiously, and to behave themselves with greater Tenderness and Moderation towards them.

So that to conclude: I utterly deny that these Principles, I have here laid down, do at all tend to countenance Rebellion, or raising Disturbances in Civil Governments; since I cannot allow you have proved Parents to be Princes or Monarchs in the State of Nature, or that Families, and Kingdoms or Commonwealths are all one: Or if I should grant them to be so, yet would it not therefore follow, that every private Subject in a Civil State hath the same Right to defend his Life, or that of his Wife and Children, against the Violence or Injustice of the Supream Powers, as a Son may have in the State of Nature to defend his Life, &c. against his Father's Rage or Violence; since I grant no particular Subject, on his own private Account, can contradict or resist the Supream Power of the lawful Magistrate (however unjustly exercised) by Force, without disturbing, or at least endangering the Quiet and Happiness of the whole Community, and perhaps the Dissolution of the Government itself, which is against the Duty, not only of a good Subject, but also of an honest moral Man, who will not disturb the publick Tranquility for his own private security or revenge. But in private Families the Case is otherwise, and Children may resist their Father in the Cases already put, without introducing either Anarchy or Civil War in the Family; since it can scarce be presumed, that either their Mother, Brothers or Sisters, will take part with a Son or Brother, against their Husband and Father, unless it were that they might thereby hinder him from committing Murder, by defending their Son or Brother's Life, when thus violently and without cause assaulted; and if it should sometimes happen otherwise, yet this would be a much less mischief, than that, out of this fear, the Lives and Liberties of an innocent Wife and Children should suffer, without cause, by his Drunkenness or Passion.

But as for the Resistance which Sons may make in the State of Nature, and when separated from their Father's Families, it is of a much larger extent, since they may then not only defend their own Lives, but also those of their Wives, Children, and their Estates, against their Father's unjust violence. Though I do here likewise restrain this self defence only to cases of actual Invasion or Assault of such Fathers upon the Lives and Estates of their Children, in which Cases, I also absolutely condemn all Actions and Proceedings, done by way of prevention, before such violence or assault is actually begun to be made upon them; much less do I allow of any revenge or return of Evil for Evil by such Children, when the danger is over; since however such revenge may be lawful between Persons in the State of Nature, no ways related or obliged to each other; yet do I by no means allow the same privilege to Children against their Parents, since I look upon the Obligation they have to them, to be of so high a Nature, that it can never totally be cancelled, tho' in those Cases of self preservation and defence they may be suspended for a time. As if I owed my Life, and all that I have to some great Person, who hath either saved the one, or bestowed the other upon me, though I should be very undutiful and ungrateful too, if upon his becoming my Enemy, though without any just cause, I should go about to return his injuries in the same kind; yet were I not therefore obliged to give up that Life and Estate he had before bestowed upon me, whenever he thought fit, without any just occasion to take them away; and I am confident that Resistance in these Cases, and with these Restrictions, doth neither derogate from that Gratitude and Piety, which Children always ought to pay their Fathers, nor yet can tend to encourage either Anarchy or Rebellion; since such Sons, when once married, and are become Masters or Heads of Families themselves, then cease to be under their Fathers Subjection as they were before, though I confess they are
always

always to honour and reverence him according to God's command in all Cases, when they will deal with them as Fathers, and not as Enemies.

M. I shall no longer dispute this Right of Resistance in Children in the Cases you have put, since I see it is to little purpose to argue longer with you about it; but this much I think is still true, that all Supream Powers whatever cannot without Rebellion and absolute Dissolution of the Government be resisted by the Subject; so that if the Government of Fathers or Heads of Families be Supream, as you seem to grant, that cannot be resisted neither, without bringing all things therein to Anarchy and Confusion.

E. Pray give me leave, Sir, to interrupt you a little; I desire you to remember that I do not allow the Power of Fathers or Masters of Families to be any more then Oeconomical, and not Civil Power; and I have already shewed you, how Resistance of such a Power, when violently and unjustly exercised, may be resisted without any Anarchy or Confusion in the Family: But as for Resistance of Civil Powers in some Cases, it is not the Subject of this Discourse; and therefore I desire you would now mind the Subject in hand, and not pass off to any other, till we have dispatch'd this, so that I would rather, if you any fresh Objections to make, that you would now do it, because it groweth late.

M. I must confess ingenuously, your Arguments have much staggered me, since I see great inconveniences may happen on either side. For if the Father or Master may be the sole Judge, when and how he may exercise this absolute Power, I grant all those Mischiefs may sometimes fall out, which you have here set forth: So on the other side, if the Children may be Judges in their own Case, those Evils may often happen, which I have already alledged. And therefore pray pardon me, if I am not too hasty in altering my Opinion in this Point, without better consideration. But methinks you have not yet fully answered one of my main Arguments, to prove the Power of Life and Death to proceed from God alone, and therefore must have been conferred at first on *Adam*, since no Man hath a Power over his own Life, (as I said before) and therefore cannot have it over that of others.

E. I thought I had already as good as answered this doughty Objection, when I had yielded to you, that neither private Men, nor Masters of Families, have any Right to defend their own Lives, much less to take away those of others; but as it is granted them by God in the Law of Nature, in order to the procuring the great end of it, *viz. the happiness and propagation of Mankind*, which I own could not, in this lapsed and depraved State of Nature we now are in, long subsist without such a Power. Yet I think I have already sufficiently proved, that we have no need to recur to I know not what Divine Charter granted by God to *Adam* or *Noah*, and from them derived to all Civil Magistrates, that ever have been or shall be in the World, the Consequence of which would be, that no Sentence of Death could be justly given against any Man, but in such Kingdoms or Commonwealths, who own this Authority as conferred on them by God in *Adam* or *Noah*, from which they must derive their Title to it. Now I desire you would shew me how many Kingdoms or Commonwealths there are in the World, who ever heard of, much less owned this Divine Charter, this fine Notion, yea scarce reaching farther than some few Divines and high Royalists of our own Island.

But be it as it will, the Antecedent or first Proposition is not true, that no Man in any case whatsoever hath Power over his own Life, and therefore neither is your Consequence; for I suppose, that for the same end for which the Civil Powers may take away another Man's Life, *viz. in order to the greater good of Mankind*, (of which my Religion or Country is a part) I am likewise Master of my own, and may lay it down or expose it, when I think it can conduce to a greater good than my single Life can amount to. And therefore, the Example of *Cedrus* the *Athenian* King is highly celebrated by all ancient Authors, and is not condemned by any Christian Writer that I know of, for exposing himself to certain Death to gain his Citizens the Victory, the loss of which would have been the ruin of that State. And in the first Book of *Maccabees*, Chap. 6. 43. (which though it be not Canonical Scripture, yet is allowed to be read in our Churches, as containing Examples of good Manners) you may read that *Eleazer*, the younger Brother of *Judas Maccabeus*, is there highly commended for his Valour in killing the Elephant, on which the supposed King

Antiochus

*Euseb. l. 8.
cap. 12.*

Rom. 5. v. 7.

Antiochus was mounted, that he might thereby destroy him likewise, though he might be assured of his own Death, by the Elephants falling upon him: And the Zeal for the Christian Religion amongst the Primitive Christians was so great, that we may read in *Tertullian*, and divers Ecclesiastical Historians, of whole Troops of Martyrs, who, though unaccused, yet offered up their Lives at the Heathen Tribunals to a voluntary Martyrdom. And farther, *Eusebius* himself doth not condemn, but rather commends some Primitive Christians, that being like to be taken by their Heathen Persecutors, cast themselves down headlong from the top of their Houses, esteeming (as he there tells us) a certain Death as an advantage, because they thereby avoided the cruelty and malice of their Persecutors. I could likewise give you (if it were not too tedious) several other Examples of Ancient Martyrs, who have given up themselves to certain Death, to save the Lives of some of their Friends, or else of Christian Bishops, whom they lookt upon as more useful to the Church than themselves, and which *St. Paul* himself does likewise suppose to be Lawful, when he tells the *Romans*, *That though scarcely for a righteous Man would one die; yet peradventure for a good Man some would even dare to die*, that is, a Man highly beneficial to others. And the same Apostle, in the last Chapter of this Epistle, returns thanks to *Priscilla* and *Aquila*, not only on his own behalf, but also for all the Churches of the Gentiles, because they had for his Life laid down their own Necks; that is, hazarded their Lives to save his, and where ever they might have thus exposed them, surely they might have lost them too. And therefore I think, I may with reason affirm, that in most Cases, where a Prince or Commonwealth may command a Man to expose his Life to certain Destruction for the publick good of his Religion or Country, he hath Power likewise to do it of his own accord, without any such command, the Obligation proceeding not only from the Orders of his Superior, but from that Zeal and Affection, which by the Laws of God and Nature he ought to have for his Religion and Country, even beyond the preservation of his own Life.

M. Well, I confess, that this that you have now said, carries some colour of reason with it, and is more than I had considered before. But pray resolve me one difficulty more, which still lies upon my Mind. By what Authority, less than a Divine Commission from God himself revealed in Scripture, do Supream Powers take upon them to make Laws? And that under no less Penalty than Death itself, against such Offences, as by the Laws of Nature do no ways deserve Death, such as Theft, Counterfeiting the publick Coin, with divers other Offences, needless here to be reckoned up. And if a Father (as you will not allow him) hath no Right over the Lives or Persons of his Wife and Children, I cannot see how a Master of a separate Family can have any such Power, more than his Wife, or any other of the Family; and the Scripture seems to countenance this Power of punishing for Murder, to be in any that will take it upon them; and therefore you see *Cain* said, *whoever meets me, will slay me*. And God tells *Noah*, *whoever sheddeth Man's Blood, by Man shall his Blood be shed*, without restraining it to any Man particularly who is to do it.

F. This Objection is easily answered, if you please to consider, what you yourself did a good while since urge to me, that God endowed *Adam* with so much Authority, as should enable him to govern his own Family and Children as long as he lived; which I readily granted you, and I only differed in the manner of its derivation, you affirming it to proceed from a Divine Charter or Grant by Revelation conferred upon him by God; and I maintaining, that both he, and every other Master of a separate Family, derive it only from God's natural, and not revealed Law, which if it be well proved, such Masters of Families, as also all Civil Powers (whom I suppose to be endued with the Power of all such Masters of Families or Freemen taken together) may for the same end, (*viz.*) the good Government and Peace of their Families and Commonwealths, make Laws under no less a Penalty than Death it self, against such Offences as by the Law of Nature do not deserve it; since without such a Power (the wickedness of Man being come to this height it is) no Family or Commonwealth could be long preserved in Peace or Safety. And therefore, I suppose you will not affirm, but that such a Master of a Family may very well inflict any Punishment less than Death for such Offences, which if they find too gentle to amend those Crimes, they may likewise for the same reason increase the Punishments ordained for it. And therefore I yield, that tho' Theft doth not in its

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own Nature deserve Death, yet if the Master of such a separate Family shall find his Children or Servants to be so addicted to this Vice, as not to be amended by any less Punishments than Death, he may, for the quiet of his Family, make a general Law, that whosoever for the future shall commit Theft, shall suffer Death; and I doubt not but such a Law, when promulged, may be lawfully executed; since this Master of a Family is intrusted by God with the sole Power of judging, not only what are Crimes, but also what are fit Punishments for them, since both are alike necessary for the happiness and preservation of the Family. And I so far agree with you, that such Masters of Families *have as much Power over the Lives of their Children and Servants, as the most absolute Monarchs have over their Subjects*, that is, for their common good, and no farther. And upon the same Principles do all Kings and Commonwealths inflict capital Punishments for the Transgression of all such Laws, as do any way entrench upon the common Interest and Safety of their People; and upon this ground, they may justly inflict no less Punishments than Death, for Coining of false Money, which is but a sort of Theft from the publick Treasure of the Commonwealth. And the same may be said for all capital Punishments ordained against other Offences of the same Nature.

M. If Fathers or Masters of Families are endued by God, (as you your self now own) not only with this Power of Life and Death, for enormous Crimes against the Laws of Nature, but also to make new Laws, or ordain what Punishments they please for such Offences, as they shall judge destructive to the quiet and happiness of their Families, I see no difference (notwithstanding what you have hitherto said to the contrary) between Oeconomical and Civil Power. For if we compare the natural Rights of a Father or Master with those of a King or Monarch, we shall find them all one without any difference at all, but only in the latitude or extent of them. For as the Father or Master over one Family in the State of Nature; so a King, as a Father or Master over many Families, extends his care to preserve, feed, cloath, instruct, and defend the whole Commonwealth; his War, his Peace, his Courts of Justice, and all his Acts of Sovereignty, tend only to preserve and distribute to every Subordinate, and Inferior Father and his Children, their Rights and Privileges. Hath a Monarch Power to make new Laws, and appoint what Punishments he will to enforce their Observation? So also hath a Father of a Family. Hath an absolute Prince Power to command or dispose of the Goods and Estates of his Subjects, for their common Quiet and Security? So also hath a Father or Master of a Family. So that all the Duties of a King are summed up in this universal Fatherly care of his People; and if the Sovereignty be the same, I cannot see any Reason, why the Rights and Prerogatives of it should not be so too. And therefore, if Nonresistance against their Authority be an unseparable Prerogative of Sovereign Power; then if a Father or Master of a Family be endued with it, he ought no more to be resisted, than the most absolute Monarch.

F. P. c. 1.
Sect. 10.

F. I perceive your Head is very full of this Notion of the Identity of Natural and Civil Power, or else you would never insist so long upon it as you do, after what I have proved to the contrary. And therefore, since I see you look upon this as your topping Argument; I shall do my endeavour to shew you more plainly the difference between them. For though I grant, that such Fathers or Masters of Families, (as we here treat of) are endued by God with divers Powers, which are analogous, or perhaps the same with those of a King or Monarch, that is, of defending their Families, as far as they are able, from Foreign force, and Domestick injuries, and of revenging and punishing all Offences that may prove prejudicial or destructive to the peace and happiness of their Families; yet doth it not therefore follow, that the Government of private Families and Kingdoms are all one, since they differ very much, not only in their Institution, but also in their End. For first, the Fatherly Power by the Law of Nature is ordained only for the Generation and Education of the Children, till they come to be grown up; and his Authority, as a Father, is ordained by God only for those ends; and therefore this Relation of a Father is so inherent in him, that it can never be parted with, or assigned over to any other, so as to make the Child or Son so assigned, to owe the same duty to him, as he did to his Father.

There

There is also, besides the Power of a Father, that of a Master or Head of a Family over his Children and Servants, whilst they continue Members or Subjects of it, which Power I grant may be assigned, or made over to one, or more Persons, whenever such Master shall think fit to institute a Kingdom or Commonwealth: Yet, as Dr. *Sanderfon* very well observes, this Power of a Master differs very much from that of the Civil Powers of a Kingdom or Commonwealth, as well in the Object, as End of this Power. For *first*, the Power of a Father is only over one single Family; whereas that of a Commonwealth is over divers Families, united under one Civil Head. *Secondly*, In respect of the End, the Power of the Master is chiefly ordained for his own Interest and advantage; but that of the Civil Power chiefly respects the good of the whole People or Community. *Lastly*, the Power of the Master of the Family is only for the maintaining his own natural Property in those things which he hath acquired in the State of Nature; whereas one great End of Civil Government, is to introduce and establish Civil Property in things, according to the Laws of the Commonwealth, and also to maintain it when so constituted. To conclude, Fathers beget their Children, and Masters acquire to themselves Slaves and Servants, but it is *from the consent of several Fathers or Masters of separate Families, that any sort of Civil Government commenced at first; so that the People at first made Kings, and not Kings the People*: And further, it is the duty of Fathers and Masters to provide for their Children and Servants, but the People ought to provide for their Kings, not only for their Necessities, but for their Magnificence and Grandeur; so that the Power of Fathers and Masters is Natural, whereas that of Kings and Republicks is Political and Artificial, as proceeding from Compacts or the Consents of divers Heads of Families or other Free-men. And as Kingdoms and Families differ in the manner of their Institution, so do they likewise in their Ends, which is of a far larger extent in the latter, than in the former; the main design of instituting Kingdoms and Commonwealths, being not only to defend their Subjects from such injuries or violence that they may do each other; but chiefly, by their united Forces, to guard them from the violence and invasion of Foreign Enemies.

For though I grant, it may sometimes happen, that a Family may consist of so great a number of Children, Servants or Slaves, as may make a little Army, such as *Abraham's* was, when he made War against the four Kings; yet is this purely accidental, and not at all essential to the being of a Family, which is as perfect in all its constituted parts, if it consists of three or four Persons, as of three or four hundred. Whereas a Kingdom or Commonwealth cannot subsist, unless it can either by its own Power, or united Forces, defend its Members from Foreign force and invasions: So also in private Families, in the State of Nature, there can be no Property acquired in Lands or Goods by any Member of it, without the Master's express will or permission. But in all Civil Governments, the very institution and preservation of Civil Property was one of its chiefest Ends, which may easily be proved by experience: Since in all Nations, where there is any Property either in Lands or Goods, there is a necessity of some Civil Government to maintain it. Whereas in divers parts of *Africa* and *America*, where there is no distinct Property in Land, and where there are no other Riches, than every Man's small Cottage and Garden, with their Hunting and Fishing Instruments, there is no need of any Common or Civil Power over them, higher than that of Masters or Fathers of Families, who own no Superiority among themselves, unless it be when they go to War, and then they chuse out of their own Numbers, for their Captains or Leaders, those whom they know to be stoutest and most experienced, whose Power determines as soon as the War ceases.

But to make an end of this long Discourse, suppose I should grant all you can desire, that Oeconomical and Civil Government do not differ in kind, but in largeness or extent; yet will it not follow, that therefore it must be in all Cases irresistible, since I think I am able to prove, that no Power whatever (except that of God himself) can be endued with this Prerogative, if once it goes about to frustrate, and destroy all the main Ends of Government, (*viz.*) the happiness and safety of the Subjects, either by downright destroying of them, or else by reducing them to a condition of Slavery and Misery. But to let you see, I would deal fairly with you, I will discourse this Point of *Adam's* Sovereignty

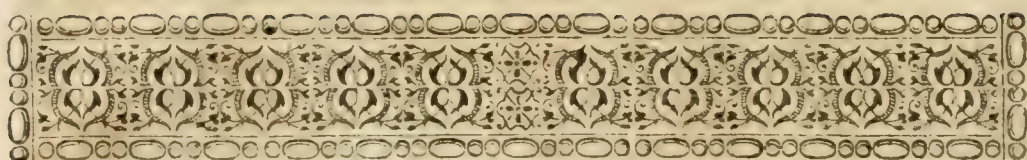
no farther, but will at present take it as the Lawyers say, *de bene esse*, or as granted, and I desire you would shew me in the next place, when *Adam* died, by what Law, either Divine or Natural, *Cain* or *Seth* (chuse which you will) could command over all the rest of his Brethren, and their Descendants. And then again, if you could do this, what benefit this Doctrine would yield to all Princes and States at this day, or how you intend to deduce a Title for them, from *Adam* or *Noah*, or any of their Sons, to their respective Kingdoms, and consequently to an absolute Subjection of their Subjects, without which all your Hypothesis will signify nothing.

M. I must return you thanks, Sir, for your candid dealing, and for the great pains you have taken to enlighten my Understanding in this important Question. And though I doubt, you have laid down Principles not so suitable to God's Will revealed in the Holy Scripture, yet I will not impute it to any want of sincerity in yourself, who, I hope, are satisfied of the Truth of what you have maintained; so on the other side, I desire you not to take it ill, if I cannot leave my own Opinion, which I have always hitherto lookt upon, as most suitable to the Doctrine of the Church of *England*, to the Practice of the Primitive Church, and to the Laws of the Land, and must continue therein, till I am convinced I am in an Error. But since I desire to have a further Conversation with you upon this important Subject, pray let me know when we shall meet again, that I may prove to you from the Holy Scripture, as well as those Authors I have perused, that there is a *Divine Right of Blood instituted by God for the Succession of Kingdoms*, which cannot without a kind of Sacrilege, or the highest Injustice, be taken away from the Right Heir.

F. I kindly accept your proffer, and, if you please, shall discourse this important Question with you to Morrow in the Evening, if your Occasions will give you leave.

M. I expect you between seven and eight, and in the mean time am your Servant.





Bibliotheca Politica.

DIALOGUE II.

Whether there can be made out from the Natural, or Revealed Law of God, any Succession to Crowns by Divine Right?

M.  *O* U are, I see, Sir, a punctual Man to your Hour : Pray do me the favour to sit down by the Fire, I will but make an end of what I am writing, and wait on you presently.

F. Your Servant, Sir, take your own time ; but pray remember the point you are now to satisfy me in.

M. Now, Sir, I have done ; and if I remember right, I am to derive a Title to all the Kings and Monarchs that have ever been, or shall be in the World, from that supream fatherly Power conferred by God on *Adam*. As for Commonwealths, which I must own to be of meer Humane Invention ; tho' I will not say that they are absolutely unlawful, yet I think they are not the Powers ordained by God in Scripture.

F. Well, Sir, we will discourse farther of that anon ; and therefore I do assure you, I do not desire any more of you now than that you should prove the Divine Institution of Monarchy, and I think that task sufficient if it can be made out in one or two Meetings.

M. It may seem indeed somewhat absurd to maintain, that all Kings are now the Fathers of their People, since you'll say Experience shews the contrary. It is true all Kings are not now the natural Parents of their Subjects, yet they all either are, or are to be reputed the next Heirs to those Primogenitors, who were at the first the natural Parents of the whole People, and do in their Right succeed to the Exercise of the Supream Jurisdiction ; and such Heirs are not only Lords of their own Children, but also of their Brethren, and all others that were subject to their Fathers : and therefore, I suppose, that God, when he conferred this Supream Power on *Adam*, did not intend it should die with him, but descend to his Heirs after his decease.

*F. P. Ch. 1.
§ 8.*

Ibid.

F. Well, I shall at present grant you all this likewise, though it might be questioned. But pray, who were those Heirs ? many, or but one Person ?

M. I suppose you will also grant me at present, what we before disputed, that the Power of Fathers over their Children, being the Fountain of all Regal Authority, by the Ordination of God himself, it follows that Civil Power not only in general is by Divine Institution, but even the Assignment of it specifically to the eldest Parents.

F. Pray whom do you mean by eldest Parents ? our great Grand-mother *Eve* ? For if you mean by it one that first had had Children, she must come in as next Heir to *Adam* by these Words.

M. No, Sir, you altogether misapprehend me, I mean the eldest Son of *Adam* ; *Eve* was his Wife, and could have nothing to do to inherit in an Hereditary Monarchy as this was.

F. I beg

F. I beg your pardon, Sir, if I misunderstood you, but you must thank the Looseness or Impropriety of your Expression for it; for, I suppose, you cannot deny, but eldest Parents commonly signify either the eldest Men, or Women that have Children, or those who have longest had Issue; and then in either of these Senses, our great Grand-mother *Eve* stood fairest to be Heir of this Divine Power of *Adam*: But this I am sure of, Parents can never signify Heirs Male or Female, much less a Child who may sometimes (according to your Hypothesis) happen to be Heir. But since I am gotten into this Mistake, I shall not leave my hold, but shall make bold a little to argue our great Grand-mother's Title; for indeed I cannot see any reason why her eldest Son (for Example) should have any right to govern his Mother, and all his Brothers and Sisters, whilst she was alive.

For first, if your Argument from Generation must be good, that every Man that is born, becomes a Subject to him that begets him, this Argument will serve for *Eve* as well as *Adam*; since (as I have already proved) the Mother hath as great (if not a greater) share in the Generation of the Children, than the Father: Or secondly, if you insist upon the Divine Grant, you so much talked of last time, of *Adam's* Dominion over the Creatures, in which his Children were included; I then proved to you, that this Grant was made as well to *Eve* as *Adam*; and consequently, that either she must have thereby an equal right with him, or at least after his Decease, to this Dominion, as a Husband and Wife, when joint Purchasers have to an Estate at Common Law. And lastly, if the Commandment of, *Honour thy Father and thy Mother*, were then in force by the Law of Nature, or by express Command from God, and that by *Honouring*, obeying must be meant (as most Commentators agree) then it will follow, that after *Adam's* Decease, all *Eve's* Sons and Descendants, though never so remote, were to have obeyed, or been subject to her, and not to her eldest Son, unless you can shew me that the Salique Law, against the Succession of Women, was made by *Adam* the first Monarch, which, I suppose, you will not undertake to prove.

M. I must confess I did not consider this Difficulty; for indeed it might never have happened, since *Eve* might have died before *Adam*; or if she did outlive him (which is uncertain) yet she was then very old, and consequently (besides the natural weakness of her Sex) incapable or unfit for Government, and so might very well leave it to *Seth*; since *Cain*, the eldest, had by the Murder of his Brother, and his flying away into another Country, forfeited his Birth-right, and made himself incapable of the Succession.

F. So then here is a Forfeiture, and an Abdication of this Divine Right of Succession in the very first Descent; whereas indeed I supposed, that this Divine Right had been at least as unforfeitable as the Crown of *England*; the very Descent of which, as our Lawyers tell us, purges all Defects in the next Heir, though he had murdered his Father and elder Brother too. But I only shew you the Absurdity of this Notion, and shall not longer insist upon it; therefore pray proceed.

M. I can't tell what might have been said, if *Cain* had come to claim his Birth-right: But this is certain, that he neither did, or could come to do it, P. P. P. c. 2. Sect. 9. since God condemned him to live in a strange Country far from his Brethren; and we read, *That Cain went out from the presence of the Lord, and dwelt in the Land of Nod, on the East of Eden; and he built a City, and called the Name of it Enoch,* Gen. 4. 16, 17. after the Name of his Son *Enoch*. And there are four Descents set down immediately of his Family, which could be no other than the Princes of that City of *Cain's* Race. So that you see, even in *Cain's* Line, the Principality descended to the eldest Son.

F. I confess *Cain's* Children and Grand-children are particularly set down in Scripture; but that they were Princes or Monarchs over their Posterity, or which way this City was governed after *Cain's* Death, whether by one, or by all the Sons of *Cain*, is no where mentioned: But I see some Men can find even absolute Monarchy in a Text, where the Scripture mentions no such thing; and no wonder, for the *Alchymists* have found out likewise the Invention of their Elixir, or Philosophers Stone, in such Texts as you and I can see no such thing. But to be more serious:

That a Father should be Lord over his Children and Posterity, I confess there may be some colour of Reason, though none cogent enough to make it out : But that an elder Brother hath any Natural or Divine Right to be Lord over all the rest of his Brethren, I can find no ground for in Reason, even upon your own Principles ; for if every Man by his Birth becomes the Subject of him that begets him, it will necessarily follow, that a Man by his Birth cannot become a Subject to his Brother, who (sure) did not beget him.

Therefore, I suppose, you will still insist upon that place in the fourth of *Genesis*, which you cited at our last Meeting, when God told *Cain*, speaking (as you suppose) of his Brother *Abel*, *His desire shall be subject unto thee, and thou shalt rule over him*. From which Words I then told you, I thought an absolute Subjection of *Abel*, and of all younger Brothers whatsoever, could not reasonably be inferred : For you may remember I shewed you, that this Promise by God to *Cain*, concerning *Abel*, might be only personal, and relate to *Abel* only, and not to the rest of his Brethren, much less all other younger Brothers, that should be in the World. And in the next Place, this Ruling might only have been by Advice and Persuasion, and not by any Authority or Right of commanding him. So that if this be the Place (as I suppose it is) from whence you would deduce your Divine Right of elder Brothers being Monarchs over the younger in all Hereditary Monarchies, I must freely tell you, I think it a very bold Undertaking to found a Divine Right upon such doubtful Expressions, as these of God to *Cain*.

M. I confess, I was now about again to urge this Place to you ; for as I was not then well satisfied with your Explanation of it, which you now again repeat, so upon second Thoughts I am much more unsatisfied with your Paraphrase upon them. For you seem to me plainly to pervert the Sense of the Words, and make them signify just nothing. For sure when God spake the same Words to *Eve* concerning *Adam*, as he did to *Cain* concerning *Abel*, can you conceive they were meant personally to *Eve* only, and concerned no other Wife that should be after her ? Or can you assign any Reason why these Words should be rather meant personally in the last, and not in the first case ? unless you will do it out of pure love to Anarchy and Confusion. And if you say these Words do not signify any despotick Power, but a ruling or governing by fair means or Persuasion, this seemeth meer trifling with God's Word, who says expressly, *Thy Brother's desire shall be subject to thee*, that is, (say you) as far as he thinks fit ; and *thou shalt rule over him*, that is, if thou hast the knack to wheedle or persuade him. Would not this have been a mighty Matter for God Almighty to have appeared to *Cain* about, and an excellent Argument to comfort him, and to appease his Wrath against his Brother ? So that it seems apparent, by this Law given by God to *Cain* and *Abel*, that this Regal and Paternal Authority was not to die with him, nor to be equally divided amongst all his Children at his Death ; or that from thenceforth no Man should have a Right, by Birth, of commanding another ; for this Command to *Abel* could not be supposed to take Place in the Life of *Adam*, for then *Adam* was Lord over all his Children, and so none of them without his Permission could rule over the rest ; and if it were otherwise by *Adam's* Appointment, then *Adam* was the Sovereign still, and the Son or Grandson, so exercising this Power, was but his Deputy : But after *Adam's* Decease, then it became a real Sovereignty in his eldest Son, as having none but God superiour to it.

F. I hope you will judge more charitably of me, than to believe that the Sense that I have put upon these Words, though different from yours, is out of any love of Anarchy or Confusion, much less out of any design to pervert or wrest this place of Scripture : And if I should be so severe as you are, perhaps I might with more reason lay this Charge at your Door. For, in the first place, I am not satisfied with your Argument, that these Words could not be meant personally, or concerning *Abel* only ; because the same Words, when spoken of *Eve*, do likewise concern her Posterity ; and therefore, when spoken concerning *Abel*, they must likewise relate to all younger Brothers in Hereditary Monarchies ; which consequence I may with very good reason deny, for whatsoever Subjection may be due, by virtue of the like Words, from *Eve* and her Posterity, to *Adam* and all other Husbands, is to be supposed to have been enjoined, because all Women are descended from *Eve*, and so were represented by her as their first Parent.

Parent. Thus St. Paul supposes all Men to be in a State of Sin and Death, as represented by Adam, their Ancestor, by whose Disobedience all have sinned. But no Man will affirm, that all the elder Brothers or Monarchs in the World were represented by Cain, and all younger Brothers by Abel; no Man at this day being (as appears in Scripture) descended from either of them: And I cannot but take notice, that the better to strengthen your Notion, you again foist in out of the Margin of our English Bible, *His Desire shall be subject to thee*; whereas in the Hebrew it is no more than, *His, or its Desire shall be to thee*.

And that the Words *rule over* are to be interpreted according to the Subject, and do not always mean a *ruling by force, or command*, appears by the same Hebrew Words made use of in the first of *Genesis*, concerning the two great Lights that God set in the Firmament, to give Light upon the Earth, to rule over the Day and over the Night; which cannot signify a ruling by force or command, but only by a natural influence or preheminance of the Sun and Moon above the Stars or Planets. And tho' you are pleased to ridicule this Explanation of mine, yet I think I may with as much reason treat yours with the like Contempt. For since your self grant, that this Power of Cain over Abel was not to commence till after the Death of Adam, and that this Murder of Abel was committed above a hundred Years after Adam's Creation, appears by the time of the Birth of Seth (who was born some time after Abel's Death) would not this thing have been a mighty Comfort to Cain, when he was in his dogged Humour, if God had bid him cheer up; for the time should come, that, if he behaved himself well, about eight hundred Years hence, when his Father Adam should die, he should then lord it over his Brother, and be revenged of him for the Affront he had received in having his Sacrifice preferred before his own? So that this Interpretation of yours is so absurd, that I do much rather agree with divers learned Commentators, as well Jews as Christians, who make not only a quite different Interpretation, but also a different Version of these Words from the Hebrew Text: And if you have the Learned Jesuit Menochius's Notes upon the Bible, I pray let me see them. Here pray observe what he says upon this place: *Sed sub te erit appetitus ejus. In Hebræo & apud LXX est, Ad te conversio ejus. Sensus est: Peccatum ejusque appetitus & concupiscentia te sollicitabit ad consensum; sed ita, ut ad te converti, & a te consensum petere & impetrare debeat. Id noster interpret ad sensum clare vertit, Sub te erit appetitus ejus.* By all which he means no more, than that Sin should tempt or solicit him to offend, but that he should rule over it, that is, had a Power so to do, if he would use it as he ought. So likewise Mr. Ainsworth upon this Place (as you may see in Pool's Criticks) puts a like Sense upon the following Words, referring the whole Sentence to the Sin, in these Words: *Peccatum ponitur pro pœna peccati; juxta Hebræos ita accipitur, Gen. 19. 15. Lev. 20. 2. 1 Reg. 7. 9. Sensus est: Prope te puniatio peccati, & ad te desiderium ejus; i. e. cupit te pœna peccati tui, ut solet post peccatum commissum; sed tu, si vis, dominaberis illi, i. e. potes declinare peccatum. Q. d. Pœna hæc sicut canis est, qui ad ostium cubat, cupiens ingredi; sed in potestate Domini est vel claudere ostium ne ingrediatur, vel aperire ut intret. Prebatur hic sensus 1. Præmi membrum de præmio loquitur, reportabis scil. præmium; ergo posterius loquitur de pœna, peccatum jam inerat ipsi, puniatio vero nondum, sed ad fores erat.* So that, according to these learned Commentators, this Place is to be thus turned out of Hebrew: *If thou dost not well, Sin lieth at the door, and to thee is its desire; but thou mayst or shalt rule over it.* Which seems to me to be a much more genuine and rational Interpretation than that of our English or Latin Bibles. So that I think I may justly except against the Authority of so doubtful and obscure a Place, as sufficient to found your Monarchical Power of elder Brothers in the State of Nature.

M. Well, Sir, since you are no better satisfied with this Testimony out of *Genesis*, for the Divine Right of Primogeniture, I will no longer insist upon it; tho' I am not yet convinced, but that my Interpretation of this Place is truer than yours, since I have likewise great Authorities on my side, both antient and modern, besides our common Versions, to authorize it; and therefore since I have many other Examples out of Scripture of this kind, I shall the less insist upon it, but will now proceed to the Examples before the Flood. First therefore, it seems highly probable, if not certain, that whatever Civil Government there was in the World before that Period of Time (as it is very rational to believe there necessarily must be some in so long a Space as near 200 Years) it was chiefly administered by those first Patriarchs, whose Names you'll find particularly recited in the fifth of *Genesis*:
And

B. P. P. § 52. And sure that long Chain we there have of them, by whose Lives the Chronology of the World is only reckoned 'till the Flood, were in their several Generations considerable Persons, nay Princes over their own Families, which could not but be very numerous: And indeed the very counting the Age of the World by the Years of their Lives, is to me an Argument, that they were no obscure, unregarded Men, but that they were either Monarchs or Princes of all Mankind, or at least over that part of the World in which they lived: And *Josephus* is likewise of my Opinion, in the first Book of the *Jewish Antiquities*, where (as you may see) *cap. 3.* he expressly tells us thus: *Seth autem centesimo & quinto anno genuit Enos. Qui dum quinque & nongentos vixisset annos, rerum curam tradidit filio suo Cainæ: And immediately after proceeds thus, Lamechum autem filium genuit Mathufelas, Enoch ortus, cum annos ipse haberet ætatis CLXXXVII. Imperium vero Lamecho eidem tradidit parens, quod jam tenuerat ipse annos DCCCCLXIX. Lamechus pariter Principatum reliquit Noe filio, postquam regnasset annos DCCLXXVII. Noe deniq; rerum summam tenuit annos nongentos & quinquaginta; Lamecho annos 182, ætatis habenti genitus.* And *Noah*, the last of the ten Patriarchs, and the surviving Patriarch of all Mankind, was declared by God the universal Monarch of the World, as soon as he came out of the Ark; to whom he granted the Dominion over all things, as appears by those Words of God to *Noah*, *Gen. 9.* whereby I conceive, that though it hath been thence concluded by Mr. *Selden* in his *Mare Clausum*, that there was a general Community between *Noah* and his Sons, yet the Text doth not clearly warrant it. For although the Sons are there joined with *Noah* in the Blessing, yet it may best be understood with a Subordination, or a Benediction in Succession; and the Blessing might truly be fulfilled, if the Sons, either under, or after their Father, enjoined a private Dominion: Nor is it probable, that the private Dominion, which God gave to *Adam*, and by his Donation, Assignment or Cession to his Children, was abrogated, and a Community of all things instituted between *Noah* and his Sons after the Flood. And when *Noah* was left the sole Heir of the World, why should it be thought that God would disinherit him of his Birth-right, and make him only Tenant in common with his Children? And if the Blessing given to *Adam*, *Gen. 1. 28.* be compared to that given to *Noah* and his Sons, *Gen. 9. 2.* there will be found a considerable difference between these two Texts. In the Benediction of *Adam* we find expressed a subduing of the Earth, and a Dominion over the Creatures; neither of which are expressed in the Blessing of *Noah*, nor the Earth there once named: It is only said, *The Fear of you shall be upon the Creatures, and into your Hands are they delivered*; then immediately follows, *Every moving thing shall be Meat for you, as the green Herb, &c.* The first Blessing gave *Adam* Dominion over the Earth, and all Creatures; the latter allows *Noah* Liberty to use the living Creatures for Food: Here is no Alteration or Diminishing of his Title to an absolute Propriety of all things, but only an Enlargement of his Commons.

F. As for the Government of the World before the Flood, I have already acknowledged, that the Scriptures being silent in it, no Man can affirm any thing positively concerning it, whether it was Regal, Aristocratical, or Paternal: Neither is it any Proof, that because God thought fit, for our understanding the Age of the World, or the Genealogy of *Noah*, from whom all Mankind now takes its Original, to set down a Series of the Patriarchs from Father to Son; or, that because they were no obscure, unregarded Men, that therefore they must all be absolute Princes or Monarchs over their Families. This is, as a Father said long ago, *Divinare magis quam scire.* But I see, when Prejudice once blinds our Reasons, we easily make good the old Saying, *Facile credimus quod volumus.* But as for your Quotation out of *Josephus*, I grant indeed, that at the first sight it makes for you: But suppose it doth, I cannot see how a Man can lay any stress upon it, since the Scripture, being silent of any such Monarchy, or Principality in these Patriarchs; since this Author writes his History above three thousand Years after the Time that these Patriarchs lived, which he there mentions; and that we are sure there were no Authors then extant, that writ of the *Anti-diluvian* Patriarchs, but *Moses* only, *Josephus* could speak no otherwise than by guess, or from some uncertain Traditions preserved amongst the *Pharisees*, of which Sect he was: To which Traditions, when not warranted by Scripture, how little credit is to be given, our Saviour himself teaches us; and also the many sutitious Traditions of the Rabbins, at this Day, do sufficiently shew us. But, I suppose,

V. 2. 3.

I. O. G. p. 47.

L. 1. c. 4.

Joseph. Ant.

Jud. Lib. 1.

cap. 3. § 4.

Oxon Edit.

suppose, that by this Word *ἀρχὴ*, there used by *Josephus*, (which is rendred by the *Latin Version Principatus*) is not meant any Monarchical Power, but only that Principality or Eminency, or that Reverence and Respect which their Posterity paid them, either in regard of their great Age and Experience, or of the Spirit of God, with which they might be supposed to be endued, sufficient to make them to be taken notice of, and revered above all other Men living in their Time. I have likewise, upon better Consideration, two other Reasons to add, why by the *curam rerum*, mentioned in this place, cannot be meant a Regal Power, because *Josephus* mentions no such thing of *Adam* the first Father, and, as you suppose, Monarch of Mankind; which sure he would have done, had he believed him endued by God with such a Power.

The second Reason is, that if you please to observe, he ascribes to *Mathuselah*, *Lamech* and *Noah*, as many Years of Empire, as of Life: So that either this place of *Josephus* signifies nothing at all, or else will make nothing to your purpose to prove these ancient Patriarchs to have been so many Monarchs.

I come now to the next Period of Time after the Flood, and whereof I grant we may discourse with more certainty: But I could have wished you would have repeated more particularly the Words, whereby you suppose God granted to *Noah* alone, an absolute Dominion over the whole Earth, and all the Creatures therein contained. But I perceive you thought the Words not very favourable for you, or else you would have repeated, or read them to me; which since you omitted, I pray give me leave to do it for you, and then I will leave it to your self to judge whether there can be any thing drawn from this Text to countenance your Opinion: The Words are these, *And God blessed Noah, and his Sons*, Gen. 9. 1, 2, *and said unto them, Be fruitful, and multiply, and replenish the Earth. And the fear of you, and the dread of you shall be upon every Beast of the Earth, and upon every Fowl of the Air, upon all that moveth upon the Earth, upon all the Fishes of the Sea, into your hand are they delivered. Every moving thing that liveth shall be Meat for you; even as the green Herb have I given you all things.* Where you may plainly see, that *Noah* hath no Preheminence in this Grant above his Children, who were (for as much as I can see) by this Text to be Tenants in common with him of the Earth, and all its Creatures. Nor is there much difference between this Grant to *Noah* and his Sons, and that made to *Adam* and *Eve*, which I proved extended alike to all Mankind, more than that the Brute Animals are here expressly granted to *Noah* and his Sons for Food, which they were not before to *Adam*.

But I perceive you your self are sensible, that this is the most plain, and obvious Sense of these Words, and therefore you have thought good to wrest them so as may best serve your purpose; and indeed you deal very cunningly to say, that this Grant may be best understood with a Subordination in Succession. 'Tis *T. T. G. c. 4.* true indeed, it serves best for your purpose that it should be so understood; but *p. 41.* that will be best understood by any Body else, which best agrees with the plain and obvious Sense of the Words. Nor will your Reason signify any thing, that the Blessing might be truly fulfilled if the Sons either under, or after their Father, enjoyed a private Dominion: Since that were to say, that a Grant whose express Words give a joint Title in present, (for the Text saith, *Into your Hands they are delivered*) may best be understood with a Subordination, or in Succession; because 'tis possible that in Subordination, or Succession, it may be so enjoyed, is all one as to say, that a Grant of any thing in present Possession may best be understood in Reversion, because 'tis possible one may live so to enjoy it. And as for the other parts of this Grant, they are so expressed that they must needs be understood to belong to *Noah's* Sons, not with a Subordination, or in Succession, but as full and equally as to *Noah* himself: *The fear of you, and the dread of you* (says God) *shall be upon every Beast, &c.* Can any Body in reason say, that the Creatures were to fear, and stand in awe of *Noah* only, and not of his Sons without his leave, or 'till after his Death? And are the following Words, (*Into your Hands they are delivered*) to be understood (as you say) if your Father please, or they shall be delivered into your Hands hereafter? You do also as wisely to say, that if *Adam* had a private Dominion given him by God, that he would not now abrogate it: For I grant, that if he had given *Adam* any such private Dominion, that there had been no reason for him now to have changed it. But I think I have sufficiently proved at our last Meeting, that he had no such private Dominion given him any more than *Eve*, and these Children that

Ibid. p. 47.

that were to proceed from them. So that this Supposition being false, there will be no such considerable difference as you suppose between these two Texts. For certainly, (though it be not here expressed) *Noah's* Sons had as much right to subdue or possess the Earth, as the Posterity of *Adam* had before the Flood, and likewise to enjoy, or eat the Products thereof; only here is granted to *Noah* and his Sons a Power to kill the Creatures for Food, which was not granted to *Adam*, or those that lived before the Flood: And tho' you will have this Grant to be no diminishing of *Noah's* Title to a sole Propriety in all things, but only an Enlargement of his Commons; yet methinks it is a considerable Privilege not only to himself, but his Sons likewise, who are hereby impowered to use the Creatures for Food, as well as their Father, or else their Case had been very hard, if when the Creatures were sufficiently multiplied, they might not have killed so much as a *Hare*, or a *Partridge*, without his leave. And if they had a right thus to use these Creatures, how this differs from an absolute Propriety in them whenever they are taken, my dull Understanding is not able to comprehend.

M. Well, since you will not admit of this sole Dominion of *Noah* over all things in the World; I shall not longer insist upon it, but will pass over to those other Authorities I have to produce out of Scripture.

F. I pray, Sir, do; and to let you see how fair an Adversary I will be, I will for the present admit, that *Noah* was a Prince or Monarch over all his Posterity; but then pray shew me to whom this Power descended after his Decease; for I can see nothing in Scripture that favours your Divine Right of Primogeniture, but that every one of *Noah's* three Sons was a Prince alike over his own Family, and had an equal share in the Earth, and all its Products, the one as much as the other: So that here it is apparent that your sole Monarchy of the World dwindles into a sort of *Gavel-kind*, where all the Sons inherit alike.

F.O.G. p. 49.
l. 1. c. 4.

M. I cannot deny the Matter of Fact to be as you have laid down; but then there might be very good reason for it, which might render the sole Principality of *Noah's* eldest Son to be not only unlawful, but unpracticable; for, in the first place, *Mr. Selden* in his *Mare Clausum* (in the place aforecited) tells us, from the ancient Tradition of the *Jewish* Rabbins, That *Noah* himself, as Lord of all, was Author of the Distribution of the World, and of private Dominion; and that by the Appointment of an Oracle from God, he did confirm this Distribution by his last Will and Testament, which at his Death he left in the Hands of his eldest Son *Shem*; and also warned all his Sons, that none of them should invade any of their Brothers Dominions, or injure one another, because from thence Discord and Civil Wars would necessarily follow.

B. P. P. § 10.

Gen. 11. 1, 2.

Nor do I see any reason why *Noah* might not emancipate his two younger Sons from the Dominion of the elder, and likewise give them a separate share of the Earth, and also an independant Power over their own Family and Posterity. In the second place, it might be impracticable for one Man to govern all Mankind, when in a little time it became so multiplied and dispersed over the Face of the Earth, and the Languages so confounded by the Act, or Will of God, that it was impossible for the three elder Sons of these three great Patriarchs to govern them. But during the Life of *Noah*, we do not read that any of his Children, or Descendants, withdrew themselves from him without his leave, but rather the contrary; for it is said, *The whole Earth was of one Language, and of one Speech; and it came to pass, as they journeyed from the East, that they found a Plain in the Land of Shinar, &c.* By which Words it appears they kept well enough together; and the very reason why they began to build the Tower, was, lest (said they) *We should be scattered abroad upon the Face of the whole Earth*: So that there was no Disunion amongst them, nor so much as a desire of it whilst *Noah* lived.

F. I pray give me leave to answer what you have said concerning this Distribution of the Earth by *Noah's* last Will, and also his making all his Sons Lords, or Monarchs alike, both which favour so strongly of the Rabbinical Liberty of Invention, that I wonder how any learned Man can believe such idle Stories, especially when the Scripture, and the most ancient Histories and Records that are extant in the World, mention no such thing. And though *Josephus* may, in the place you have cited, suppose that every one of the Patriarchs he mentions were Princes or Monarchs, yet he doth not say any thing like it, concerning the three Sons of *Noah's* being Monarchs, or of this Partition of the Earth between them; but maketh them to live together in those mountainous Parts, 'till they descended

descended from thence into the Plain : So that it was impossible for *Noah* to make a Distribution of those Parts of the Earth, which were not yet discovered. And it is apparent by the Scripture it self, that a considerable time after *Noah's* Death all Mankind lived together ; and therefore there was no Impossibility (as you suppose) why *Noah's* eldest Son could not have commanded his Brethren, and their Descendants, they being not as yet dispersed, or separated from each other ; as you may see by the first Verses of the 11th of *Genesis*, which you cited but now. So that if *Noah's* eldest Son was disinherited of his Right of governing his Brethren, and their Descendants, that could not be the cause of it, which you assign : And if *Primogeniture* be a *Divine Right*, appointed by God himself, and unalterable by *Humane Laws*, as you suppose, I cannot see how the Will of a Father, which is but a *Humane Institution*, can ever alter it : For I remember you laid it down as a Maxim, at our last Meeting, *That the Divine Right of the right Heir never dies, can be lost, or taken away* ; so that if there hath been any such thing as a *Divine Right* of *Primogeniture* belonging to the eldest Son of *Noah*, it is not likely that he would have permitted his two Brothers to have usurped it from him.

M. I shall not insist longer on this Tradition, concerning the Distribution of the Earth amongst the Sons of *Noah*. But certainly it is not a thing to be made so light of as you do, since *Cedrenus*, a modern *Greek* Historian, is very particular in it ; besides, so many other learned Men (and the great *Selden* among the rest) have given countenance to it : And though I grant that *Primogeniture* is of *Divine Right*, yet that might very well be altered by *Noah's* Will, especially since his Children might be satisfied that he being a Prophet, and Preacher of Righteousness, made this Division of his Paternal Power by a *Divine Command*.

But I shall not dwell longer upon this, but proceed to the next Period of Time ; (*viz.*) that of the Confusion, and Dispersion of Tongues, in which there are more evident Footsteps of this Right of *Primogeniture*, as also of the Patriarchal Power I maintain : And therefore pray turn to the 10th of *Genesis*, and there you will find (after the Recital of the Genealogy of every one of the Sons of *Noah*, whose Descendants are there particularly set down) these Words in the fifth Verse ; *By these were the Isles of the Gentiles divided in their Lands ; every one after his Tongue, after their Families, in their Nations.* And likewise in the 20th Verse, *These are the Sons of Ham, after their Families, after their Tongues, in their Countries, and in their Nations.* And in the last Verse, *These are the Families of the Sons of Noah, after their Generations, in their Nations ; and by these were the Nations divided in the Earth after the Flood.* So that if we consider the first Plantations of the World, which were after the Building of *Babel*, and the Confusion of Tongues, we may find the Division of the Earth into distinct Kingdoms, or Nations, by several Families and Languages, whereof the Sons, or Grand-children of *Noah*, were the Kings, or Governors, by a fatherly Right. And for the preservation of this Power, and Right in these Fathers, God was pleased to bestow upon several Families a Language on each by it self, the better to unite it into a Nation or Kingdom. So that it becoming impossible (as I said before) for the elder Sons or Descendants of these three great Patriarchs to govern all Mankind, who now no longer understood each others Language, it was absolutely necessary that the Heads of the several Families should take that care upon them, and their Children submit to them ; wherein they had the Direction of God Almighty, who had commanded them to obey their Parents ; and a miraculous Declaration of his Will for their Dispersion, by the confounding of their Language ; and that so ordered by God too, that the Descendants of the same Person, and Family, spoke one Tongue : Was not this a declaring these Fathers Princes of these several Families, and Tongues by God himself, who by his Providence had thus confounded their Tongues, and dispersed them by Families, that they could no longer be governed by three or four Patriarchs, but must have as many distinct Governments, as there were different Tongues, there being no means at present of any Intercourse, or Correspondence one with another, or with their former Governors ? So that however in this Confusion of Tongues (by which, as *Josephus* supposes, there were seventy two distinct Nations created) yet were they not confused Multitudes without Heads, or Governors, and at liberty to chuse what Governors, or Government they pleased ; but were so many distinct Families

B. P. P. 510. milies which had Fathers for Rulers over them of the same Speech: Whereby it is manifest, that even in the Confusion, God was careful to preserve *Fatherly Authority*, and *Monarchical Power entire*, by distributing the Diversity of Languages according to the Diversity of Families; which shews that *God* was still for *Government*, and that *Paternal* too; since it is evident that every People followed their Ancestor, or Patriarch, as their Prince or Leader in this Dispersion, who had a *Patriarchal Authority* over their Posterity: For by what else can you suppose they could have made their Children and Descendants to have followed them as far as the utmost Isles of the *Gentiles*?

F. I confess there are many Difficulties as well in the time, as manner of this Dispersion, according to our common Chronology; for if you suppose, that the Building of the Tower of *Babel* fell out within two hundred Years after the Flood; as most of our Chronologers, who follow the *Hebrew Account*, do; then it is certain, that *Noah*, and his Sons, were still alive, who lived 'till above four hundred Years after the Flood; so that either *Noah*, and his Sons, did not travel with the rest of their Descendants into the Plain of *Shinar*, where they built the Tower of *Babel*, which yet seems contrary to the Text, which says, *All Mankind being of one Language, they travelled, &c.* And if these Children and Grandchildren left their Ancestors at home, what became of their Monarchical Authority, when their Subjects were gone? And you your self do assert, that none of *Noah's* Posterity divided from him, as long as he lived. So on the other side, if you suppose that *Noah* and his Sons marched along with them in this Expedition, you must make them either to have quitted their Authority over their Descendants, or else to have joined with them in this wicked and foolish Enterprize of building a Tower, whose top should reach to Heaven; which is very hard to conceive of *Noah*, a Preacher of Righteousness, or his Sons, whom the Scripture no where mentions, or blames for having a hand in this Attempt.

L. I. c. 4.

But if you will lay the fault of building this Tower upon *Nimrod*, as *Josephus* doth, who makes him a great Tyrant, and a wicked Man, this will make against your own Hypothesis, which supposes no Rebellion, or Usurpation, to have been during the Life of *Noah*. So that to avoid these Absurdities, and Difficulties that will follow by the placing the Building of the Tower of *Babel* within two hundred Years after the Flood, (as you must do, if you follow the present *Hebrew Account*) I think it were much better to embrace the Account of the LXX, which by adding a hundred Years to the Lives of each Patriarch between *Noah* and *Abraham*, makes the Confusion of Tongues to have happened not 'till about five hundred Years after the Flood; which takes away those Absurdities I mentioned, of making *Noah* and his Sons to have had a hand in the building of the Tower of *Babel*, or else that *Nimrod* did it, whether they would or not; which is likewise as hard to suppose: All which Difficulties, according to this Account, may very well be taken away; since then, *Noah* and his Sons were dead, before ever this Tower began to be built. And for the further Proof of this, I refer you to the learned *Isaac Vossius* his Vindication of the Translation of the LXX, and his Chronology accommodated to that Account, as most agreeable to the ancient *Hebrew Original*: But this is only by the by.

M. I thank you, Sir, for your Solution of this great Difficulty, which I am satisfied cannot be better solved, than by this Account of the LXX Version. But I pray answer my Argument, which in my Opinion clearly makes out the Divine Institution, as well as Necessity of Patriarchal Power.

F. I was just coming to it; and therefore in the first place I must tell you, that I cannot imagine how you can prove from this Text concerning the Dispersion of Nations, and their following certain Leaders of their own Family, and Language, when otherwise they could not have conversed together; that therefore God must be careful in all this Transaction to preserve your imaginary Patriarchal Power entire; of which the Scripture is altogether silent. And you might as well tell me, that because in *Hamibal's*, or *Darius's* Army, there were whole Squadrons of different Languages, who were ranged under Captains of their own Language, or Country, that therefore Fathers, or Grand-fathers were Leaders of each Squadron; or that *Darius*, or *Hamibal*, were careful to preserve Paternal Authority.

T. T. G. c. II.
p. 177.

But

But suppose I grant you the utmost you can ask, yet, since God thought fit at this Confusion of Tongues, that all those of one Tribe should speak the same Language, which was not understood by any other, it is likewise very reasonable to suppose, that they could not travel so far as the utmost parts of *Asia*, without chusing, and following some Captains or Leaders to be their Guides, and Commanders in so long a Journey; and whom could the People sooner chuse to follow for this purpose than their Fathers, or Grand-fathers, to whose natural Affection, Wisdom, and long Experience, they had from their very Infancy always paid a great respect and submission: Yet doth it not therefore follow, that such Fathers or Grand-fathers thus led or commanded their Children and Posterity (now grown up to be Men and Women) by any natural or Divine Right, or that they followed them otherwise, than as an Army of Volunteers, or than as a Caravan in the Desarts of *Arabia* doth a Captain of its own chusing. But if you will suppose any thing beyond this, you will find yourself involved in greater Difficulties and Absurdities. For pray tell me, what great care was there to preserve a Patriarchal Authority in this Confusion and Dispersion, by breaking it into so many Parts? Indeed I am so blind I cannot see it. For as I will not deny, but it was God's Will to confound the Language, and disperse the Families of Mankind, both for a Punishment, and also for the better peopling of the World: So am I not convinced, that God, in acting thus, was at all careful to preserve the Patriarchal Authority derived from *Adam*. For you cannot deny, but that at the same time he destroyed the true Supreme Fatherhood of the natural Monarch, or Heir of *Adam*, who could be but one Person, as you yourself have already asserted: Or, can it be any Reason to say, that God, for the preservation of Paternal Authority, let so many several new Governments, with their Governors, start up, who must all enjoy this Authority? And is it not more reasonable to say, that God was careful to destroy this Paternal Authority, when he suffered those of *Noah's* Sons or Descendants, then actually in Possession of it, to have their Monarchy torn in pieces, and shared by so many of their Subjects? And would it not be an excellent Argument for Monarchical Government to say, when any Monarchy was shattered to pieces, and divided amongst many revolted Subjects, that God was only careful to preserve Monarchical Power, by rending a great settled Empire into a Multitude of little Governments. So that it is altogether irrational to conceive, that if any three or more right Heirs of *Noah* had Paternal Authority or Sovereignty by Right of Fatherhood over Mankind at *Babel*, that the next Moment, (all they yet living) *Seventy two others* should have a like Sovereignty by Right of Fatherhood over the same People, divided into so many distinct Governments: Either then these *Seventy two* Fathers were actually Rulers just before the Confusion, and then they were not one People; but an *Aristocratical Commonwealth*, and then where was your *Monarchy*? Or else these *Seventy two* Fathers had *Paternal Authority*, but knew it not, which is hard to suppose. And if these *Seventy two* Grand-children of the Sons of *Noah* had a Right to divide this Supreme Paternal Authority of *Adam* into as many distinct Governments as there were Heads of Families, why might not their Sons have done so *in infinitum*? And then there could never be any common Prince or Monarch set over them all, but by *Force* or *Conquest*, or else by *Election*; either of which destroys your Notion of the *Divine Right of Primogeniture*.

M. 'Tis a very pleasant Notion methinks this of yours, that the Posterity of *B. P. P.* the first Planters of the World should follow their Ancestors, not as Children or Subjects, but as Volunteers, and from a Reverence (forsooth) and Affection to their Age, Wisdom, and Experience. Indeed, I am thus far of your Mind, that these Children followed their Fathers freely, and were not driven afore them, nor dragged after them with Chains: But to infer from hence, that they owed their Father none of this Service or Attendance, but out of meer good Nature and Gratitude, which are due to Strangers that have obliged us by being our Benefactors, is a Notion that only becomes one, that owns no Right to be derived from Patriarchal or Paternal Power; and since there were none of these Patriarchs, who were the Leaders of Mankind in this Dispersion, but might be one or two hundred Years old, if not more; can any thing in Nature look more ridiculous, than for Children and Descendants of these old Men, to elect them who begat them, to be their Leaders and Governors, at a hundred Years of Age?

And to give you an Answer why Governments might not upon my Principles crumble into new ones, *in infinitum*, I think it may be sufficient to tell you, that, First, God prevented it, and that for the most part by Monarchs, ever since the Creation of the World; and although he was pleased to permit many Divisions after this time; yet he would never suffer Mankind to be crumbled into such small Divisions, as to make every distinct Household an Independent Government. Secondly, Those Monarchs prevented it, who would be sure to reduce to their Subjection any Person that should attempt to divide himself or Family from the rest, and set up for an Independent State, without his leave and liking. Thirdly, The necessity of Mankind prevented it, such small parcels of Men not being able to preserve themselves, but by uniting with the rest, for their Support and Protection: So that if you could never so clearly prove, that here was no Subordination to the eldest Son or Heir of *Noah*, yet this signified nothing, for God ordered it so to be; and if these Grand-sons of *Noah* were Independent Governors of their own Families, without any Subordination to the eldest Son's Son or Heir of *Noah*; yet were they still Sovereign Princes, and much less had any dependence upon their own Children and Descendants. So that hitherto the Multitude were kept under Subjection, and could not set up a Commonwealth, without rebelling against those Independent Governors.

Now if in this horrible Confusion of Tongues, the People, by the Will of God, still fell under the Monarchical Government of these Fathers of Families; I desire to know when they could obtain their Freedom, and in what Age it began?

F. I must confess you had some reason to look upon my Notion of the Descendants of the Sons of *Noah* following their Ancestors in this Dispersion, not as Children or Subjects, but as Volunteers, to be as ridiculous as you are pleased to make it, could you have any way proved at our last Meeting, that the Power of Parents over their Children and Grand-children to all Generations, is as absolute and perpetual, as that of a Master over his Slaves, and that a Son and a Servant were all one at the first; but since you failed in that Proposition, which is the Groundwork of all the rest, I must beg your pardon, if I cannot found the Descendants of *Noah*, following their Fathers or Ancestors in the Dispersion, upon any higher ground, than meer Gratitude and Esteem: I mean for all such of them, who were themselves at that time Masters or Heads of separate Families; and I desire to know of you, by what other Motive or Obligation, a great Grand-son (for Example) was obliged to follow his great Grand-father to the World's end, as his Prince or Leader, when perhaps his own Father thought fit to lead him another way; and I desire you to shew me if they had (as they might very well have) commanded different things, which was to be obeyed? And how Disobedience to a Man's own Father in this case would have consisted with that Law of Nature, which you so much insist upon, of honouring a Man's Father? But indeed all this mistake proceeds from your first false Notion, which I see you cannot yet be quit of, in still supposing the Obedience and Subjection of Children to their Fathers to be absolute and perpetual: The contrary to which, I have already made out at our last Meeting: And therefore I must tell you again, that this Notion of these Grand-children, or Descendants following their Fathers or Ancestors, not out of Duty, but Choice, is not so ridiculous as you are pleased to make it; and though I do not suppose, that they elected these Ancestors of theirs for their Leaders by a *Balloting Box*; yet this much I am sure of, that they might prefer, if they pleased, the following of their Father or Grand-father, rather than their great Grand-father, if they perceived that he had doted through Age, or else by Weakness or Infirmities was unable to lead them; or that his natural Temper was so Imperious and Tyrannical, that there was no living under his Government? Neither doth the Scripture it self any where declare the contrary, only says in general, that by these Grand-sons of *Noah*, the Isles or Countries of the Gentiles were divided, according to their Families and Nations, without particularly telling us, who were the Princes or Leaders of each Tribe or Family. And to instance, if this Division happened in the Time of *Peleg* or *Phaleg*, as the *Greek* LXX makes it, then not *Alphaxad* the great Grand-father, or *Selah* the Grand-father, but *Heber* the Grand-son was the Prince or Leader of his Family at this Division: Since it is from

from him that *J. sephus* supposes the *H. brews* not only to have descended, but to have taken their Names. L. 1. . . 6.

Nor do you any better answer the other Difficulty, how all these Seventy two Patriarchs, or great Grand-fathers, could all of them claim alike Regal Power from *Adam* or *Noah*, whose right Heir could be but one Person. Indeed you tell me, that God ordered it so, by appointing every Nation a distinct Language, and to be led by the Ancestor of their Family. This is altogether *gravis dictum*; for though it be true, that the Scripture says, that this Division of Tongues was made according to the different Tribes or Families of these Descendants of *Noah*; yet doth it no where mention their being led or commanded by Seventy two Grand-fathers Patriarchs; and there might be for ought that you or I know, not only Seventy two, but seven score such Captains or Leaders of them; Nay, every distinct Father of a Family, when this Monarchical Power came to be crumbled into so many parts, might as well have claimed a share in this Regal Power, they being by this Confusion wholly reduced again into a State of Nature.

Nor are your Reasons sufficient to convince me of the contrary. As for your first Reason, that God hath not suffered it to be so, signifies little; for either he hath hindered it by an *express Command*, or by the *ordinary Course* of his Providence: The former I am sure you can no where shew me; and as for the latter, whenever any Nation or People shall be pressed with the like Necessity of separating themselves from the Government under which they were born, as the several Families of Mankind had at this Division of Tongues; I see no reason why they may not have a like Right of quitting their Country, and becoming Subjects to another Government; or else of setting up one of their own if they can.

As for your second Reason, that Monarchs would be sure to reduce to their Subjection any Person that should offer to divide himself and Family from the rest, and set up for an Independent State, without their good leave and liking. This is a good Argument indeed, that they were not able to do it, but none at all, that they ought not to do it if they could; since this were but to exercise that Supreme Paternal Authority with which God hath invested them, as much as ever he did any of those Seventy two Descendants of *Noah*, who set up so many new Governments, without the consent of *Noah's* right Heir.

Your third Reason, I confess, is somewhat better; That the Necessity of Mankind prevented it. But this also makes quite against you, and only proves, that the Heads or Masters of Families being sensible they could not preserve themselves, but by uniting with others for their mutual Safety and Protection, were fain to submit (though by their own Consents) to some Common Power, for their own, as well as their Families Preservation. So that I cannot see from any thing you have said, that God had that great care you suppose of maintaining your Patriarchal Power, much less this Divine Right of Primogeniture.

M. I see it is to no purpose to dispute with you any farther about the Patriarchal Power of these Sons of *Noah*, and therefore I shall proceed to the Times after the Confusion of Tongues; in which, the first Instance I shall give you, is that of *Jacob*, who when he had bought his Brothers Birth-right, *Isaac* blessed him thus; *Be Lord over thy Brethren, and let the Sons of thy Mother bow down before thee.* By which is plainly denoted a Regal Power or Dominion over *Esau* his Brother, and the rest of his Brethren, if he had any. So likewise we find— F. P. c. 1. §. 8. Gen. 27. 29.

F. I pray give me leave to interrupt you a little, for I have a great deal to say to this Instance you have now brought of *Jacob* and *Esau*; and therefore I desire I may speak it before you proceed any further. And first, by the way, I cannot but observe, that this Divine Right of Primogeniture, which you suppose here to be meant by the Word *Birth-right*, was capable of being sold for a Mess of Pottage, and all *Esau's* Heirs disinherited of their Right, because their Father preferred his Belly before his Honour and Interest. But if your Principles are true, a Divine Right never dieth, nor can be lost, or taken away.

The second thing I must take notice of, is your making *Isaac*, presently after *T. T. G. c. 11.* this Sale of the Birth-right, and as it were in confirmation of it, to have given *Jacob* his Blessing; whereas it is apparent by this Story in *Gen. 25.* that many Years (perhaps twenty or thirty) between *Jacob's* buying of this Birth-right, and *Isaac's* conferring of the Blessing upon him, as any one that will but read the 26th of *Genesis* may easily see. But if you had better observed this Text, you

Ib. p. 146.

you would have found that this Blessing was not intended for *Jacob*, but *Esau*, for whom *Isaac* then mistook him. But be it as it will, whether the Blessing was given to *Jacob* or *Esau*, it matters not; for from these Words I can by no means gather, that any Government or Superiority was thereby conferred on *Esau* over *Jacob*, or *Jacob* over *Esau*. For, first, as to *Jacob*, this Blessing was never fulfilled, as to be Lord over *Esau*, who was Prince of Mount *Seir* in *Jacob's* Lifetime: And as for bowing, or any other Token of Superiority, we read indeed, that *Jacob* at his meeting his Brother *Esau* bowed seven times towards him to the Ground, though he had before sold his Birth-right to *Jacob*; and therefore this Birth-right cannot mean any ruling Power, or Lordship over his Brethren; since it is manifest from the Text, that *Jacob* had no more Brothers than *Esau*; nor had *Isaac* any consideration of *Jacob's* having then bought this Birth-right; for when he thus blessed him, he took him not to be *Jacob*, but *Esau*; nor did *Esau* understand any connexion between the Birth-right, and the Blessing; for says he to his Father, *He hath supplanted me these two times, he took away my Birth-right, and behold now he hath taken away my Blessing*. Whereas, had this Blessing, to be Lord over his Brethren, belonged to the Birth-right, *Esau* could not have complained of this second Act as a Cheat, *Jacob* having got nothing, but what *Esau* had sold him long before.

T.T.G.p.147.

So that it is plain, Dominion was not then understood to belong either to the Birth-right or Blessing. And therefore it is more rational to suppose, that this Word Birth-right only relates to the Right of Priesthood, which the *Jews* supposed always to descend to the eldest Son, before the Law was given: And that by Blessing, is meant no more, than that double Portion of Goods, which by the *Jewish* Law was due to the First-born; and that this is the true Sense of this place, I desire you to look in *Gen. 21. 10.* (if you please to give me your Bible, I will shew you the place, and will read the Words to you) where *Sarah* taking *Isaac* to be Heir, says, *Cast out this Bond-woman and her Son, for the Son of this Bond-woman shall not be Heir with my Son*: Whereby could be meant nothing, but that he should not have a Pretence to any equal share of his Father's Estate after his Death, but should have his Portion presently, and be gone. And farther we read, *Gen. 25. 5, 6.* That *Abraham* gave all that he had unto *Isaac*; but unto the Sons of the Concubines which *Abraham* had, *Abraham* gave Gifts, and sent them away from *Isaac* his Son, while he yet lived; that is, *Abraham* having given Portions to all his other Sons, and sent them away, that which he had reserved, being the greatest part of his Substance, *Isaac* as Heir possessed after his Death; but by being Heir he had no Right to be Lord over his Brethren: For if he had, why should *Sarah* desire to rob him of one of his Subjects or Slaves, by desiring to have him sent away?

Ib. p. 148.

So likewise, if you look into the first of *Chron. chap. 5. v. 1.* you will find a place, that plainly confirms this Interpretation, where it is said; *Reuben was the first-born, but forasmuch as he defiled his Father's Bed, his Birth-right was given unto the Sons of Joseph, the Son of Israel; and the Genealogy is not to be reckoned after the Birth-right. For Judah prevailed above his Brethren, and of him came the chief Ruler; but the Birth-right was Joseph's*, though he was the youngest Son. And that this Birth-right was *Jacob's* Blessing on *Joseph*, *Gen. 58. 22.* tells us in these Words; *Moreover I have given thee one Portion above thy Brethren, which I took out of the Hand of the Amorites with my Sword, and with my Bow*. Whereby it is not only plain, that the Birth-right was nothing but a double Portion of Right due to the eldest Son; but the Text in *Chronicles* is expressly against your Opinion, and shews that Dominion was no part of the Birth-right; for it tells us, *That Joseph had the Birth-right, but Judah the Dominion*. So that unless you were very fond of this Word Birth-right, without considering in what Sense it is to be taken, you would never bring this Instance of *Jacob* and *Esau*, to prove that Dominion belongs to the eldest Son over his Brethren: For if this Blessing of *Isaac* upon *Jacob* signifies any thing more than this, it could not relate to his own Person, who never ruled over his Brother at all; and therefore it is at most no more, than a Prophecy, shewing that the *Jews*, as being descended from *Jacob*, should in after Times rule over the *Edomites*, or Posterity of *Esau*, according to what *Rebekah* had been foretold from God; *Two Nations are in thy Womb, and two manner of People shall be separated from thy Bowels, and the one People shall be stronger than the other People, and the Elder shall serve the Younger*. And so *Jacob* blessed *Judah*, and gave him

Gen. 25. 23.

him (though not in his own Person, but in his Posterity) the Scepter and Dominion: From whence you might have argued as well, that the Dominion belonged to the third Son over his Brethren; as well as from this Blessing of *Isaac*, that it belonged to *Jacob*, they being both but Predictions of what should long after happen to their Posterities, and not declaring any Hereditary Right of Dominion in either *Jacob* or *Judah*.

M. I will not rigorously insist, that *Primogeniture* is such a *Divine Right* as cannot be altered by any *Humane Act* or *Constitution*; but yet I take it to be such a Right, that without the Father orders it otherwise in his Life-time, or that the elder Brother doth of his own accord depart from his Right, he will have a good Title to his Father's Government or Kingdom, and consequently to command over the rest of his Brethren; and therefore *Grotius* makes a great deal of difference between Hereditary and Patrimonial Kingdoms, the former being to descend to the eldest Son only, but the latter are divisible amongst all the Sons, if the Father please: And hence I suppose it was, that as Mankind increased, one petty Kingdom grew out of another. Thus the Land of *Canaan*, which was peopled by six Sons of *Canaan*, and *Philistim* the Son of *Mizraim*, had eight or nine Kings in the Time of *Abraham*, and above thirty Kings in *Joshua's* Time; which could proceed from no other Cause, but the Fathers dividing their Kingdoms in their Life-times, or at their Deaths, amongst their Sons and Descendants; for we hear not of one tittle of *Popular Elections* in those early Days. And I have Proofs enough of this in Scripture. Since thus we find it to have been among the Sons of *Ishmael* and *Esau*, as appears by *Gen. 25* and *26*. where it is said, *These are the Sons of Ishmael, and these are their Names by their Castles and Towns, &c. Twelve Princes of their Tribes and Families. And these are the Names of the Dukes that came of Esau, according to their Families, and their Places by their Nations.* And hence it is, that in after Ages, Princes did often divide their Kingdoms amongst their Children, of which you may see divers Examples in *Grotius De J. B. l. 2. cap. 7.* which Divisions, when made and submitted to by the eldest Son, I doubt not but were good. Yet I think it cannot be denied for all this, that by the Law of Nature or Nations, where there is no Will of the Father declared to the contrary, the eldest Son ought to inherit. And this is the Judgment not only of Christian, but Heathen Writers. Thus *Herodotus*, the most ancient Greek Historian, lays it down for a general Custom of all People or Nations, that the eldest Son should enjoy the Empire; and the Romans were likewise of this Opinion; and therefore *Livy*, when he speaks of two Brothers of the *Allobroges* contending for the Kingdom, says, *The Younger was more strong in Force than Right.* And in another place, he calls this Right of the eldest Son, the Right of *Justin. l. 11.* Age and Nature; as also doth *Trogus Pompeius* in his Epitome of *Justin*, when he calls it the Right of Nations; and in another place, a Right of Nature, when he says, that *Artibazanes*, the eldest Son of the King of Persia, challenged the Kingdom himself, which the Order of his Birth, and Nature itself appointed amongst Nations. *Justin. l. 2.* I could give you many other Authorities from more Modern Authors, but I rather chuse to give you these, because you cannot except against them, as Writers preposess by either Jewish or Christian Principles. So that if this Right of *Primogeniture* be not absolutely Divine, yet it is at least most Natural and Reasonable.

F. I see you are convinced, that this *Divine Right* of *Primogeniture* is not to be proved out of Scripture, and therefore you are contented to fall a peg lower, and to take up with the Right of Eldership by the Law of Nature or Nations, which howsoever you are pleased to confound them, are for all that two distinct things; for if the Succession of the eldest Son were by the Law of Nature, it were no more to be altered by the Will of a Father, than the Law of God itself; and therefore notwithstanding all your Quotations, your Right of *Primogeniture* amounts to no more than this, that it hath been a common and received Custom in many Kingdoms or Nations to observe it; and therefore *Herodotus*, whom you have now quoted, calls it very rightly a Custom of Nations, that the eldest Son should enjoy the Empire: Which yet it is not true amongst all Nations or People, by your own Confession: For then there would have been no difference between Hereditary and Patrimonial Kingdoms; but the eldest Son should have inherited alone in the one, as well as in the other. Unless you can suppose, (as sure you will not) that some Kingdoms are to be disposed according to the Law

Law of Nature, and others not. But if you would have considered *Grotius*, (whom you have now made use of) he would have instructed you better. For in the Chapter you have now cited, he makes the difference between them to depend upon the manner of acquiring the Kingdoms he speaks of; if you please I will shew you the Words, *Sed in Regnorum Successione distinguere debent Regna quæ pleno modo possidentur, & in Patrimonio sunt, ab his quæ modum habendi accipiunt ex populi consensu, de quo discrimine egimus supra. Prioris generis Regna dividi possunt etiam inter Marces, & Feminas, ut in Ægypto, & Britannia, olim factum vidimus.*

—*Nulla discrimine Sexus,*

Reginam scit ferre Pharos,

5. 14 *ait Lucanus; de Britannis Tacitus, Neque enim Sexum in imperio discernunt.* But look a little farther, and you will find the reason of the difference between them: *At et Regna quæ populi libero consensu facta sunt hæreditaria, ex præsumpta populi voluntate deferuntur. Præsumitur autem populus id voluisse quod maxime expedit.* And of this you may see he giveth divers Examples, which we need not particularly recite: But this much is apparent, that *Patrimonial Kingdoms* are divisible among all the Children, because they are supposed to be wholly in the Father's Power, either by *Conquest*, or the *first Plantation* of them: But *Hereditary* ones, that descend to the eldest Son, can only become so by the free consent of the People, by whom they were instituted; and therefore both *Ishmael* and *Esau*, whose Territories were wholly *Patrimonial*, might very well divide them alike, amongst all their Sons; but then your *natural Right of Primogeniture* is quite destroyed. The like may be said of other Kingdoms where this Custom took place: And therefore those Passages you have cited out of the *Greek* and *Roman* Authors, for the Succession of the eldest Son to be by the *Law of Nature*, is to be understood according to the Sense of those Authors, who often confounded the *Law of Nature* or *Reason*, properly so called, with those commonly used, or received Customs among civilized People; which they called the *Law of Nations*, which yet were not *Laws* properly so called, since they may, without any transgression of the *Law of Nature*, be practised different ways.

And therefore, though I allow *Primogeniture*, as well in Families as Kingdoms, to have had a just Preheminence by the practice of many civilized Nations, and look upon it as an excellent sort of natural Lot (where the elder Brother is fit to govern) that he should succeed before the younger, to avoid Strife among such Relations, and Civil Wars in Kingdoms: Yet that this is still to be understood according to the Custom of the Country, or Will of the People, that instituted the Monarchy, I desire to go no farther, than that Example that you have but now brought of *Artabazanes*, who was the eldest Son of *Artaxerxes*, but born before he was King, and *Xerxes* his younger Son, but born after his obtaining the Crown; the Matter being referred to the People, they determined it in favour of *Xerxes*; as you will find in *Herodotus* and *Justin*, whom you have but now quoted. And though I grant, that when afterwards in the same Kingdom, the like Controversy was started between *Cyrus* and *Artabanus* (who was afterwards called *Artaxerxes Memnon*) it was judged just the quite contrary way, whether by Right or Favour, I will not determine; yet this may let you plainly see, that this Ancient and Wise Nation had no settled Law, either natural or municipal, concerning this Matter. I could give you several other Instances of the same kind, which you may consult at your leisure in *Grotius*, and other Authors; only this much may be certainly gathered from what yourself as well as I have said concerning it, that there is no certain Rule or Law, either of Nature or Nations, concerning this Matter: And therefore, your Instances of the Sons of *Esau* and *Ishmael* are so far from making out your Hypothesis, that if their Fathers could divide their Kingdoms into as many Parts as they had Sons, without any Subjection to the elder Brother, I can see no reason why every one of their Children or Descendants might not have done the like if they had pleased, till their Principalities had become as small, as those of the Dukes of *Saxony* are at this day; so that I cannot see, to what purpose you have brought these last Instances out of Scripture, unless it were to make against yourself, and to prove that there were then, as there are now in the World, a sort of Princes who may be lawfully so, without claiming any Title from *Adam* or *Noah*, much less by any *Right of Primogeniture*.

M. It is sufficient for my purpose to be able to shew you, from these Examples of the Sons of *Eſau* and *Iſmael*, that as well Hereditary as Testamentary Kingdoms, did antiently commence according to the Law or received Custom amongst Nations, without any Consent of the People or Descendants of those that were to be governed by them : And as long as the Succession to such Kingdoms were by any certain or known Rule constantly practised among Mankind, the matter is not much whether the eldest Son succeed to his Father alone, or that his Brethren shared with him in the Inheritance. For since it was God's Will to institute Civil Government amongst Mankind, it must be also his Will to make the Succession to it clear and certain to all the Subjects that were to submit to it, as he hath done, whether one Brother or many succeed ; since the Will of the Father is as certain a Rule of Succession, as that by Inheritance ; and therefore what you have said in answer to my last Instances of the Sons of *Eſau* and *Iſmael* signifies not much.

F. I did not then deny, but grant at our last Meeting, that Families might at first grow up into Kingdoms ; but yet I do still (as I did then) assert that such Governments could not be instituted by any Father or Grandfather alone, without the exprefs or tacit Consent of his Children and Descendants, supposing them once married and separated from their Fathers or Ancestors Families. But it is needless to repeat what I then said ; only give me leave to mind you, that at the beginning of this Discourse you maintain'd, that not only Kingly Power in general, but also the Succession to it by the eldest Son, or his next Brother, is of Divine Right or Institution, or else all that you urged concerning the natural Right of Dominion of *Cain* over *Abel* was to no purpose : But now you insist, that Succession by a Testament or Will of the Father is also as much by the Law of Nature as the other ; in which I think you are very much mistaken, since the Right of bequeathing Kingdoms, or any thing else, by Testament, is neither prescribed by the Revealed Will of God, nor the Laws of Nature ; since all settled Property in Lands or Goods, before the Institution of a Civil Government, proceeding only from Occupancy or Possession, must cease in the State of Nature with the Life of the Occupant or Possessor. Therefore in that State a Testament cannot take place by the Testator's Death ; since, as soon as he dieth, his natural Right in the thing bequeathed is quite lost and extinguish'd : So that the Dead not having an Interest in any thing, the Legatee cannot sustain the Person of the Testator, whose Right ceases before that of the Legatee can take place ; and therefore the Testament or Disposition of such things may then without any Crime be neglected or altered by the Survivors, unless all those who pretend an Interest in it do agree to it, or swear to see it fulfilled during the Testator's Life-time. And for this cause we find *Abraham* binding his Servant that ruled over his House by an Oath, not to take a Wife for his Son of the Daughters of the Land ; and *Jacob* taking an Oath of *Joseph*, not to bury him in *Egypt* ; because they doubted whether they could oblige their Sons or Servants to do it by their Testaments. So that it appears evident to me, that the Power of making Testaments, and bequeathing Lands or Goods, is but a Consequence of that Propriety in Lands, Goods, or Dominions, which arises from Compact or common Consent in a Kingdom or Commonwealth, after it is instituted, as I think I am able to prove whenever you please to discourse with me farther about it. But as for the Right of bequeathing Crowns or Kingdoms by Testament, I will not deny but that some Kingdoms may have been bequeathable by their original Constitution, and others become so by Custom ; yet I cannot grant that this Right belonged to the Prince or Monarch by the Laws of God or Nature, but proceeded purely from the received Law or continued Custom of that Kingdom : So that you must either confess, that there is no such thing as a Divine Right of Succession, or else it is such a one as signifies as much as nothing, since humane Laws or Constitutions can alter it or take it away. So that after all this pother about this Divine Right, it is not so good as an old Estate Tail, which formerly no Fine could bar. And I must farther tell you, that I cannot assent to your Opinion, that Succession by a Will or a Testament is so certain as that by Inheritance ; since all such Testaments must depend upon the Credit of the Witnesses, whose Credit may often be question'd by the Subjects, and who may very well for their own ends make a younger Son to have the whole, or at least a Share in the Kingdom, to whom his Father never intended any ; and which was likewise more easy to be done before such time as

written Wills or Testaments, solemnly published according to Forms of Law, came in use.

But because you suppose that the natural Laws of Succession to Kingdoms are so plain and certain, that I may a little convince you of your Mistake in this matter, I shall for the present suppose that the Succession of an elder Son or Brother is sufficiently easy to be known; yet I doubt it will not prove so in many other Instances: And therefore to let you see I do not make this Scruple without cause, suppose *Abel* (for example) to have left a Son or a Daughter behind him, when his Brother murder'd him, pray tell me who was to succeed after the Death of *Adam*, this Son or Daughter of *Abel*, or *Seth* their Uncle?

M. We do not read of any Children that *Abel* had, and therefore I cannot tell what to say to it.

F. Well, but since it is probable he might have had Children, pray tell me (supposing he had) whether this Child, were it Son or Daughter, or *Seth* the Uncle, was to succeed?

M. Since you will needs have me speak my Opinion in a thing so uncertain, I think this Child, were it Son or Daughter, ought to have succeeded before the Uncle.

F. Pray, Sir, tell me by what Law or Rule you thus judge? whether by the Law of God or Nature?

Ver. 8.

M. I must confess, God hath prescribed nothing expressly concerning it, more than what he says, *Numb. 27.* that *if a Man dies leaving no Sons, ye shall cause his Inheritance to pass unto his Daughter*; with divers other Rules of Succession to Inheritances there specified: And besides, it is more suitable to the Laws of Nature, that the Children of the elder Brother should inherit before their Uncle, there being no reason that they should be punished for their Misfortune, in having their Father die before he could succeed to the Government.

F. I doubt the Place of Scripture you have cited doth not reach this Case of Kingdoms: For first, this being a Municipal Law of the *Jews*, could only concern that Commonwealth; and secondly, it only relates to private Inheritances: And that this is so may be proved from the next Verse, where it is said, that a Man's Brethren shall be his Heirs; that is, all of them were to be Heirs alike, only the eldest was to have a double Portion. And if this Law concerning Daughters were to reach the Succession of Kingdoms at this day, the Laws of *France* and other Countries, where Women are barred from succeeding to the Crown, would be against the Laws of God and Nature: And the like may also be said concerning the Succession of the Nephews before their Uncles, or of Uncles rather than the Nephews, whose Fathers never enjoy'd the Crown; divers Nations having different Customs, and that with a like appearance of Reason, concerning it. For on the one hand, if the Son of *Abel* might have pleaded, that he was the First-born of the eldest Son of *Adam*, and so ought to represent his Father; *Seth* the Uncle might likewise with as good reason urge, that he was more nearly related in Blood to *Adam*, as being his Son, than the Son of *Abel*, who was but his Grandson; and besides, being older than he, was endued with more Wisdom and Experience, and consequently was fitter to govern. But if *Abel* left only one Daughter, or more, I doubt not but the Question would have been harder to be decided; since, if Women are not permitted to govern in private Families, they will not (especially amongst Warlike Nations) be admitted to govern Kingdoms, especially since it would be left in her power, not only to govern her self, but by marrying to chuse a King for her Subjects, whom they do not approve of. And therefore we read, that in divers of the antient Kingdoms of the World Women were excluded from the Succession, as they are in *France* at this Day.

T.T.G. c. 11.
p. 157, 158. Nor are these the only Questions that either might then, or else have in latter Ages been started concerning Succession in Kingdoms and Principalities, and have been the cause of great Disputes between Pretenders to Crowns, where a King dies without lawful Issue: As, whether a Grandson by a younger Daughter shall inherit before a Grand-daughter by an elder Daughter? Whether the elder Son by a Concubine before the younger Son by a Wife? From whence also will arise many Questions concerning Legitimation, and what by the Laws of Nature is the difference betwixt a Wife and a Concubine? All which can no ways be decided but by the municipal or positive Laws of those Kingdoms or Principalities. It may further be enquired, whether the eldest Son, being a Fool or
Mad-

Mad-man, shall inherit this paternal Power before the younger, a wife Man ? And what degree of Folly or Madneſs it muſt be that ſhall exclude him ? and who ſhall be the Judges of it ? Alſo whether the Son of a Fool ſo excluded for his Folly ſhall ſucceed before the Son of his wiſer Brother who laſt reigned ? Who ſhall have the Regal Power whiſt a Widow Queen is with child by the deceaſed King, until ſhe be brought to bed ? Theſe and many more ſuch Difficulties might be propoſed about the Title of Succeſſion, and the Right of Inheritance to Kingdoms, and that not as idle Speculations, but ſuch as in Hiſtory we ſhall frequently find Examples of, not only in our own, but likewise other Kingdoms. From all which we may gather, that if the Laws of God or Nature had preſcribed any ſet Rules of Succeſſion, they would have gone farther than one or two Caſes ; as concerning the Succeſſion of elder Sons or Brothers, where an elder Son dies without Iſſue ; and would alſo have given certain infallible Rules in all other Caſes of Succeſſion beſides theſe, and not have left it to the Will or particular Laws of divers Nations to have eſtabliſhed the Succeſſions ſo many ſeveral ways, as I am able to ſhew have been practiſed in the World.

M. I muſt confeſs you have taken a great deal of pains to perplex the Succeſſion to *Adam*, which ſeems deſigned for nothing elſe, but to make me believe, that if *Adam* or any of his Sons were Kings or Princes, it muſt have been by the Conſent or Election of their Children or Deſcendants : Which is all one as to ſay, that thoſe antient Princes derived their Titles from the Judgment or Conſent of the People, the contrary to which is evident as well out of Sacred as Civil Hiſtory.

F. Since you appeal to Hiſtory, to Hiſtory you ſhall go ; and to let you ſee, that I have not invented theſe Doubts about Succeſſion of my own head, and that there might have very well been a real Diſpute about the Succeſſion to *Adam* in the Caſes I have put, may appear by the many Diſputes and Quarrels that have been in ſeveral Nations concerning the Right of Succeſſion between the Uncle and the Nephew ; of which *Grotius* is ſo ſenſible, that he confeſſes, in the latter end of the Chapter laſt cited, that where it could not be decided by the People's Judgment, it was ſain to be ſo by Civil Wars, as well as private Combats ; and therefore he is forced ingenuouſly to confeſs, that this hath been practiſed divers ways according to the different Laws and Cuſtoms of Nations : And he gives us here a diſtinction between a direct lineal Succeſſion and a tranſverſed, and acknowledges, that amongſt the *Germans*, as alſo the *Goths* and *Vandals*, Nephews were not admitted to the Succeſſion of the Crown before their Uncles. The like may be ſaid of the *Saxons* and *Normans* ; and therefore we find in our antient *Engliſh* Hiſtory, that before the Conqueſt the Uncle, if he were older, always enjoyed the Crown before the Nephew ; which I can more particularly ſhew you, if you think fit to queſtion it. The like manner of Succeſſion was alſo amongſt the *Iriſh-Scots* for above 200 Years after *Fergus* their firſt King. The like Cuſtom was alſo obſerv'd among the *Iriſh*, as long as they had any Kings amongſt them, and is called the Law of *Tanſtry*. The ſame was alſo obſerved in the Kingdom of *Caſtile*, where, after the Death of *Alphonſo* the Fifth, the States of that Kingdom admitted his younger Son *Sancho* to be King, putting by *Ferdinand de la Cerda*, the Grandſon to the late King by his eldeſt Son, tho' he had the Crown left him by his Grandfather's Will. So likewise in *Sicily*, upon the Death of *Charles* the Second, who left a Grandſon behind him by his eldeſt Son, as alſo a younger Son named *Robert*, between whom a Difference ariſing concerning the Succeſſion, it being referred to Pope *Clement V.* he gave Judgment for *Robert*, the younger Son of *Charles*, who was thereupon crowned King of *Sicily*. And for this reaſon it was that Earl *John*, Brother to King *Richard* the Firſt, was declared King of *England* by the *Estates*, before *Arthur* Earl of *Britain*, Son of *Geoffery* the elder Brother : And *Glanvil*, who was Lord Chief Juſtice under *Henry* the Second, in that little Treatiſe we have of his, makes it a great queſtion who ſhould be preferred to an Inheritance, the Uncle or Nephew.

But as for Daughters, whether they ſhall inherit at all or not, or at leaſt be preferred before their Uncles, is much more doubtful ; ſince not only *France*, but moſt of the Kingdoms of the Eaſt at this day, from *Turkey* to *Japan*, do exclude Women from the Throne : And it was likewise as much againſt the grain of the antient Northern Nations ; and hence it is that we find no mention of any Queen to have reigned amongſt the antient *Germans* or *Iriſh-Scots*, and never but two among the *Engliſh-Saxons*, and thoſe by Murder or Uſurpation, and not by Election,

as they ought to have done. And upon this ground it was, that the Nobility and People of *England* put by *Maud* the Empress, and preferred *Stephen* Earl of *Blois* to the Crown before her: For tho' he derived his Affinity to the Crown by a Woman, yet being a Man, he thought himself to be preferred before her. So likewise in the Kingdom of *Arragon*, *Mariana* in his History tells us, that antiently the Brother of the King was to inherit before the Daughter. Examples may also be given of divers of the other Instances, but these may suffice.

M. I pray give me leave to interrupt you a little: For by these Examples you would seem to infer, that these Laws about settling the Succession of Crowns in several Kingdoms depended upon the Will of the People; whereas I may with better reason suppose, that if such Laws and Alterations have been in such Successions, they were made by the sole Will of the first Princes, in which the People had no hand: For in the most antient Monarchies there was a Time, when the People of all Countries were governed by the sole Wills of their Princes, which by degrees came to be so well known in several Instances, that inferior Magistrates needed not resort to them in those cases; and the People being for a considerable time accustomed to such Usages, they grew easy and familiar to them, and so were retained, tho' the Memory of those Princes who first introduc'd them was lost; and after Kings finding it better to continue what was so received, than to run the hazard and trouble of changing them, were, for their own ease and the good of their Subjects, contented they should be still from Age to Age so continued. Which Custom may hold as well in Laws about Succession as other things; and therefore we find that even in those Monarchies, where the People have nothing to do in making Laws, Women are excluded; which could proceed at first from nothing else but the declared Will or Law of the first Monarchs. So likewise the Original of the *Salique* Law is wholly ascribed to *Pharamond*, the first *French* King: And *Mariana* (whom you lately cited) tells us, that *Alphonso* King of *Arragon* made a Law, that where Heirs Male were wanting, the Sons of a Daughter should be preferred before the Aunt; which Law is wholly attributed to the King, for he adds presently after: *Sic saepe ad Regum arbitrium jura regnandi commutantur.*

F. Granting all this true that you have said, you cannot but confess, that the Laws of God and Nature have established nothing in this matter, or else it could not be in the power of Kings to make or alter Laws concerning the Succession, as your last Quotation intimates they may: Yet even in the most absolute Monarchies the Laws about the Succession of the Crown must wholly depend upon the Consent of the People, who are to see them observed, or else every Monarch might alter these Laws of Succession at his pleasure; and the Great *Turk*, or King of *France* (now the Assembly of the Estates is lost) might leave the Crown to a Daughter, if either of them pleased, and disinherit the next Heir Male.

Vide Hottot. France. Gallia. cap. I. But as for the Original of this *Salique* Law in *France*, you'll find your self much mistaken, if you suppose, that that Law was made by the sole Authority of *Pharamond*: For the antient *French* Histories tell us, that the Body of *Salique* Laws, which are now extant, were made by the common Consent of the whole Nation of the *Franks*, who committed the drawing of them up to three Judges or Commissioners, and which Laws *Pharamond* did only confirm: And any one that will but consult those Histories may see, that Kings were so far from having the sole Legislative Power in their own hand, that they were frequently elected by the Estates. Nor is that truer which you cite from *Mariana*, that the Kings of *Arragon* had Power alone to make Laws: It appears quite contrary from the Constitutions of that Kingdom, where the King could do nothing of this kind without the Consent of the Estates, and was not admitted to the Crown without taking an Oath to the Chief Justice in the Name of the People, that he would observe the Laws and Constitutions of the Kingdom, otherwise that they would not be obliged to obey him.

P. N. M. 1. 55. Vid. Heft. Boeth. L. But at once to let you see, that about the Succession of the Sons or Descendants by Daughters, the Cases are much more nice and intricate; and that when such Cases happen in limited Monarchies, where there is an Assembly of Estates, they are the sole Judges in such Differences, may appear by two famous Examples in modern History: The first is in *Scotland*, about 400 Years ago, when after the Death of King *Alexander* III. who died without Issue, when two or three several Competitors claim'd a Right to the Crown, as descended from several Daughters

of *David* Earl of *Huntington*, great Uncle to the last King, the chief of which being *John Baliol* and *Robert Bruce*, the Estates of the Kingdom not being able to decide it, they agreed to refer it to *Edward I.* King of *England*, who adjudged the Crown to *Baliol*: Yet did not this put an end to this great Controversy; for not long after *Baliol* being deposed, *Bruce* revived his Title, and the States of *Scotland* declared him King, whose Posterity enjoy it at this day.

A like Case happened in the last Age in *Portugal*, after the Death of King *Henry*, surnamed the *Cardinal*, without Issue, when no less than four eminent Competitors put in their Claims; some claiming from the Daughters of *Don Duarte*, youngest Brother to the last King *Henry*; but the King of *Spain*, and other Princes, as Sons to the Sisters of the said King. *Henry* dying without Issue, left ten Governors over the Kingdom, to decide, together with the Estates, the Differences about the Succession; who quarrelling among themselves, as also with the Estates, before it was decided, *Philip II.* King of *Spain*, raised an Army, and soon conquered *Portugal*: And yet we have seen in his Grandson's time, that the Estates of *Portugal* declared this Title void, and the Crown was settled in the Posterity of the Duke of *Braganza*, who still enjoy it.

And how much even Kings themselves have attributed to the Authority of the Estates in this matter, appears by the League made between *Philip the Long*, King of *France*, and *David* King of *Scots*, wherein this Condition was express'd: *That if there should happen any Difference about the Succession in either of these Realms, he of the two Kings, which remained alive, should not suffer any to place himself on the Throne, but him who should have the Judgment of the Estates on his side; and then he should with all his Power oppose him, who would after this contest the Crown.* To conclude, I cannot see any means how, if such Differences as these had arisen in the first Generation after *Adam*, I say, how they could ever have been decided without a Civil War, or else leaving the Judgment thereof to the Heads or Fathers of Families, that were then in being: Which how much it would have differed from the Judgment or Declaration of the States of a Kingdom at this day, I leave to your self to judge.

M. I shall not trouble my self to determine how far Princes may tie up their own hands in this matter of the Succession, and leave it to the States of the Kingdom to limit or determine of it; but from the Beginning it was not so; and therefore give me leave to trace this Paternal Government a little farther: For tho' I grant, that when *Jacob* and his twelve Sons went into *Egypt*, together with their Families, they exercised a Supreme Patriarchal Jurisdiction, which was intermitted, because they were in subjection to a stronger Prince; yet after the Return of these *Israelites* out of Bondage, God from a special Care of them chose *Moses* and *Joshua* successively to govern as Princes, in the place and stead of the supreme Fathers; and after them likewise for a time he raised up Judges, to defend his People in time of Peril. Yet that all these were endued with Regal Authority, may appear, in that *Moses* is called in *Deuteronomy*, a King in *Jehurum*, (that is, over *Israel*.) And when *Moses* saw that he was to die, he besought God, to set a Man over the Congregation, that the Congregation of the Lord be not as Sheep which have no Shepherd. And as for the Judges, it is apparent from the Book that bears their Name, that they had Power of making Peace and War, and of judging in all Cases of Appeal; insomuch that whosoever would not hearken to the Priest, or to the Judge, even that Man should die. But when God gave the *Israelites* Kings—

F. I pray give me leave to interrupt you a little, for I have a great deal to say against your Notion of the Government of the *Israelites* before they had Kings actually nominated by God; for notwithstanding all you have said, it doth not appear to me, that either *Moses*, *Joshua*, or the Judges, were any more than figuratively or in a larger Sense to be stiled Kings: For as for *Moses*'s being called King in *Jehurum*, he only calls himself so Poetically, in that excellent Hymn of Blessing, which he bestoweth upon the twelve Tribes: For certainly God did not suppose him to have been a King, when in *Deut. 17. 14.* he speaks of the Children of *Israel* setting a King over them, as a thing that was to happen many Years after, and there lays down Rules how he should govern himself, which had been needless, if they had had a King already. And that *Moses* was not a King, *Josephus* himself shews us in his *Antiquities*, lib. 4. where he makes *Moses* to have instructed the Children of *Israel* at the time of his Death to this purpose: *Aristocracy is the best Form of Government, and the Life that is led under it the most happy; and there—*

Vol. Merian.
Mag. Hist.

P. N. M. lē.
p. 59.
Vol. Merian.
in the Reign
of Philip le
Long.

E. P. O. 77.

Deut. 33. 5.
E. P. P. 9 33.
Num. 27.
16, 17.

Deut. 17. 11,
12.

therefore let not the desire of any other sort of Government take possession of you, owning no other Matter than the Laws, and doing every thing according to it : For God is your King, and that is sufficient for you. And if Moses was no King, then certainly Joshua was none neither.

B. P. P.
Sect. 36.

Josh. 1. 16,
17.

M. Pray give me leave to answer what you have now said against the Kingly Power of Moses and Joshua : For if you will please to remember, that tho' the *Sanddrim* had been constituted before this time, yet Moses esteemed them as Sheep without a Shepherd, if a Man was not set over them which might go out before them, and which might lead them out, and bring them in ; and God approved his Desires, and appointed Joshua to succeed him, and the People received him accordingly, and told him : *All that thou commandest us we will do, and whithersoever thou sendest us we will go : according as we hearkened unto Moses in all things, so will we hearken unto thee.* If this were not Kingly Power, then is there no such thing. So that this Discourse, which Josephus puts into Moses's Mouth, seems directly contrary to Moses's Thoughts and Practice. And whereas he makes Moses to have opposed Obedience to the Laws to Kingly Government, it is a pure Greek Notion : For whilst the *Grecians* lived under Kings, they had few or no Laws ; but when they set up Commonwealths, they then found the Necessity of having Laws, and then the *Dominion of Laws* was opposed to the Government of Princes : But this was contrary to the Practice of *Israel* ; for they were to live according to their Laws, as well under Kings as without them, in all Estates and Conditions ; and their Kings were bound to govern them by the Law, and not by their Wills contrary to the Law. So that in this Josephus clearly made the antient Customs of his Country to comply with a Greek Notion, that had no being for some hundreds of Years after Moses was dead.

And as for the Time of the Judges, even in the Intervals between them, when every one did that which was right in his own eyes, even then the *Israelites* were under the Kingly Government of the Fathers of the particular Families, over whom the Prince or Head of it had likewise a supreme Power.

F. But pray give me leave to speak a little farther : Let me ask you, what is an *Aristocracy*, if this be not ? viz. an Assembly of the Elders, or chief Fathers of Families of each Tribe, meeting, consulting, and resolving of the publick Affairs of the Commonwealth, under their Head or President, the Chief of the Tribe. And this is the Government for which Josephus makes Samuel so much afflicted, when the People would quit it for a Monarchy.

B. P. P. § 31.

Ver. 12. 18.

M. I think you are much mistaken in this point ; for it is no where declared, that these Fathers of Families governed their own Families independently ; for then there would have been no publick Government at all : Nor yet is it said, that these Fathers governed by Majority of Voices chosen out of themselves ; for then, I grant, it would have been a *Democracy* : Nor yet doth it appear, that a few of the better sort of Fathers of every Tribe governed it by a Council and Magistrates, or that there was such Council of the several Tribes ; but on the contrary, every Tribe was governed by the Prince or Head of it ; and these Princes Moses calls, *the Heads of the House of their Fathers*, in Numb. 7. 2. and who were over those that were numbered and made their Offerings. And Moses tells us particularly what every Man's Name was ; as, *Nashon the Son of Aminadab, of the Tribe of Judah ; and Nathaniel the Son of Zuar, Prince of Issachar, &c.* Now if there was in those days any Government at all in *Israel*, then were these Princes the Governors of the several Tribes, and so every Tribe was under a Monarch, tho' the whole State of *Israel* was not under any one Person, or constant standing Council, and consequently was a System of little Monarchies.

Josh. 9.

1 Sam. 1. 3.

F. I am not at all better satisfied with your last Reply : For in the first place I have Josephus on my side, who must needs know what the Government of his Country had been, better than you or I ; and he expressly calls it an *Aristocracy*, in which the Judge (when there was one) was only in the nature of a General or Stadtholder, to whom the last Appeal was to be made in all Causes : And it is also as plain, that neither Moses, Joshua, nor the Judges, had *Monarchical Authority* : For tho' it be true, the two first could make War and Peace, yet this was also with the Consent of the Princes of the Congregation, as plainly appears by the Story of the Peace made with the *Gibeonites*, which the Princes of the Congregation confirm'd by an Oath. Neither could they raise Taxes upon the People, or take any thing from them without their Consent ; and therefore Samuel appeals to them, how little

little he had oppress'd them, *Whose Ox or whose Ass have I taken? whom have I defrauded? whom have I oppress'd?* Neither could they, nor the Judges their Successors, make any new Laws for the People; God himself being their King and Legislator: And therefore what you urge as to the Regal Power of *Moses* and *Joshua*, after the *Sanhedrim* had been constituted, amounts to no more, but that both of them were Heads, or Captains of the People, to lead them out to War, and bring them back again, which is express'd by going in and out before them; and their Obedience to their Military Orders, as also to such things which God hath expressly commanded, is understood by these Words: *All that thou commandest us, we will do; and whithersoever thou sendest us, we will go*: Yet still this was with respect to their obtaining the Land of *Canaan*; for otherwise, if either *Moses* or *Joshua* should have gone about of their own heads to have led them again into *Egypt*, I suppose you will not say, the *Israelites* were bound either to have followed them, or submitted to them; but rather might have resisted them in such case.

And therefore *Josephus's* Speech, which he makes *Moses* to deliver, is not so ridiculous as you are pleas'd to make it: For the Laws here mentioned by him, and here set in opposition to Monarchy, were not such Laws as were made by the *Greek Commonwealth*, as you suppose, but the Law given from God by his hand; and these he might well think were sufficient, with such Power as he and *Joshua* enjoyed, without having any recourse to a humane Monarchical Government, since God himself was their King: And as for the Judges that succeeded them, they had much less Power than either *Moses* or *Joshua*; since it is apparent by the Story of *Deborah* and *Barak*, Judges the 4th, who were the Princes or Generals of the Tribes of *Zebulun* and *Naphtali*, that they had no Power to force the People to go out to fight against the *Canaanites*, whether they would or no. And therefore you will find in the next Chapter, in the Song of Victory which they sung, that many of the Tribes came not into their assistance; therefore it is there said, *That for the Divisions of Reuben there were great thoughts of heart*; and therefore they ask, *Why abidest thou among the Sheepfolds?* &c. And presently after it is said, *Gilead abode beyond Jordan: and why did Dan remain in the Ships?* After continued on the Sea-shore, and abode in his Breaches. And so they conclude with, *Curse ye Meroz, curse ye bitterly the Inhabitants thereof, because they came not to the help of the Lord against the mighty.*

So that I am persuaded it was the want of this Power in the Judges of making Laws, of imposing Tributes or Taxes, and of forcing Men to serve in the Wars against their Enemies (which they did before only as Volunteers) that made the *Israelites* the more desirous to have a King over them, like those of other Nations, who were endued with these Prerogatives. And therefore the best Commentators do interpret the Prediction of *Samuel* concerning the manner of the King that should reign over them, and would take their Sons for his Chariots and his Horsesmen, and to be Captains over thousands, &c. to relate to his Royal Power of enrolling, and making them serve in his Army, either as Officers or Soldiers, and the taking of their Fields and their Vineyards, and the Tenth of their Seeds, &c. to give his Officers and Servants; to signify no more than his Power of imposing publick Tribute, and Impositions on the People, to maintain his Royal Splendor, and the Necessities of the State, as other neighbouring Kings were wont to do; all which they not being used to before, they should cry unto the Lord by reason of them, as a great Oppression: And that *Saul*, when he came to be King, used this Prerogative, of forcing the People to come and serve in the War, in a higher manner than *Samuel* or the Judges had done before, appears by the 11th Chapter of this Book, when *Nahash* the *Ammonite* came to make War against *Jabez*: *Saul took a Yoke of Oxen, and hewed them in pieces, and sent them throughout all the Coasts of Israel by the hands of Messengers, saying, Whosoever cometh not forth after Saul, and after Samuel, so shall it be done unto his Oxen: And the Fear of the Lord fell on the People, and they came out with one Consent.* 1 Sam. 8. 11, 12.

And it seems evident to me, that the Power, which *Samuel* had before the Children of *Israel* desired a King, was not Monarchical, but mix'd of Aristocracy and Monarchy together, in which *Samuel* as Judge had a Judicial Authority, and likewise a Supreme Military Power of leading them out to War against the *Philistines* and other Enemies; and yet notwithstanding, the Supreme Power, in all other things, remained wholly in the principal Heads or Fathers of the Tribes, which whether they were chosen by the People, or enjoyed it by Right of Inheritance,

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I confess the Scripture is silent ; and therefore I am not at all satisfied with your Notion, that the Government of these People, when they had no Judges, consisted of twelve petty Monarchies, under the Heads or Princes of the Tribes ; for there is no Authority in Scripture to countenance any such Opinion, the place you bring for it out of the first and seventh of *Numbers* not at all proving it. For, though I grant there were twelve Princes of the Tribes, whose Names are there set down, and who are called Heads of the Houses of their Fathers, yet is it no where said, that these were endued with Civil Power, or were chief Rulers over the Tribes ; for it is apparent all Civil Power remained then in *Moses* and the *Sanhedrim*, who under him decided all Controversies : So that it is most natural to suppose, that these Heads of the Tribes were not Civil Magistrates, but the Military Leaders, or Captains of each Tribe, when they went out to War, and are the same, who, in this Chapter, are called the renowned of the Congregation, &c. and Heads of the Thousands of *Israel*.

Nor doth it follow, that because there were such Officers in *Moses's* Time, that they must continue the same under the Judges, after so many Slaveryes and Oppressions that this People had undergone ; or that if they did still continue, that their Power was Monarchical ; or that they could do any thing without the Consent of the Heads, or Fathers of Families of each Tribe, in whom I suppose the Supreme Authority was in the Intervals of the Judges : And therefore we find in the ninth of *Judges*, that the Men of *Shechem*, and all the House of *Millo* made *Abimelech* King ; that is, not over all the Tribes of *Israel*, but over *Ephraim* and half *Manasses* only, which is to be understood by *Israel* in this Chapter ; where it is said, ver. 18. by *Jotham* the Son of *Gideon*, speaking to the Men of *Shechem*, That they had made *Abimelech*, the Son of a Maid Servant, King over the Men of *Shechem*, because he is your Brother.

So likewise after *Abimelech* was dead, the Children of *Ammon* made War against the Children of *Israel*, as appears by the tenth of *Judges* ; and they encamped in *Gilead*, which was a Country on the other side of *Jordan*, which was inhabited by the *Reubenites*, the *Gadites*, and the other half of *Manasses*, who by themselves consulted for their own Safety ; for it is said in the last Verse of this Chapter, And the People and Princes of *Gilead* said one to another, What Man is he that will begin to fight against the Children of *Ammon* ? He shall be Head over all the Inhabitants of *Gilead*. From which Assembly and Consultation it plainly appears, that they looked upon themselves to have a Right of setting a Prince or Head over them, distinct from the rest of the Tribes of *Israel* : And in the next Chapter you will find, that *Jephthah* was made Prince, or Judge by the Elders of *Gilead*. And tho' it is said that *Jephthah* went with the Elders of *Gilead*, and that the People made him Head and Captain over them, yet that can't be meant of all *Israel*, but only of the two Tribes and a half, which inhabited the Land of *Gilead* ; for we find, Chapter the 12th, the Men of *Ephraim* making War upon *Jephthah*, because he had not called them out to fight against the *Ammonites* ; and you will find, verse the 4th, that *Jephthah* gathered together the Men of *Gilead*, and fought with *Ephraim*, and that the Men of *Gilead* smote *Ephraim*. In all which Story it appears, there was none concerned in this War but the *Gileadites* only ; that is, those Tribes that inhabited that Region.

I have likewise another Authority for this separate Power of each Tribe, when there was no common Judge over them ; as may appear from the Story of the *Danites* in the 18th Chapter, who wanting a Country to dwell in, it is there said the Children of *Dan* sent five Men of their Family to spy out a Country for them ; which thing could not be done without an Assembly of the Chief of the whole Tribe : Neither is there any mention in all this Story of any such Chief, or Prince of the Tribe, as you suppose, only that six hundred Men went by common Consent, who made War, and conquered the City and Country of *Lash*, which they called *Dan*.

But that all the Children of *Israel*, during the Intervals of the Judges, did meet in one common Council or Assembly, upon any great Accident or Emergency, appears by the 20th Chapter of this Book of *Judges* ; where, after the Rape and Murder committed upon the *Levite's* Wife, it is said in the two first Verses ; Then all the Children of *Israel* went out, and the Congregation was gathered together as one Man, from *Dan* even to *Beerseba*, with the Land of *Gilead*, unto the Lord in *Mizpeh*. And the Chief of all the People, even of all the Tribes of *Israel*, presented them-

themselves in the Assembly of the People of God, four hundred thousand Footmen that drew Sword: Who being thus met, the Levite, the Husband of the Woman that was slain, having told them the Story, concludes thus; Behold ye are all Children of Israel, give here your Advice and Counsel; and the Result is, All the People arose as one Man, saying, We will not any of us go to his Tent, neither will we any of us turn into his House, &c. Now if this were not as Democratical an Assembly, as you can any where meet with in either the Roman or Greek Histories, I leave it to you your self to judge; though I grant the chief of the People, or Tribes of Israel, might preside in it. To conclude; I think I may with very great Reason maintain with Josephus, that the Government of the Tribes of Israel was Aristocratical before their setting a King over them: For had Samuel been endued with an absolute Monarchical Power (as you suppose) it had been a very needless Request of the Children of Israel, to ask him to make them a King to judge them, as other Nations.

M. You have made a very long (I had almost said a tedious) Discourse to prove, that the Government of the Children of Israel was not Monarchical before the Time of Saul: And though I cannot now well remember all the Particulars of your Discourse, yet this much I can gather from it, that you are fain to confess, that during the Intervals of the Judges, and when there was no King in Israel, but that every Man did that which was right in his own Eyes: Even then the Israelites were under the Kingly Government of the Fathers of particular Families: For in the Consultation after the Benjamitical War, you mentioned, for providing Wives for the Benjamites, we find the Elders of the Congregation bore the only sway: To them also were Complaints to be made, as appears by Verse 22. And though mention be made of all the Children of Israel, all the Congregation, and all the People; yet by the Term of all, the Scripture means only all the Fathers, and not all the whole Multitude, as the Text plainly expounds it self, in the second of Chronicles, where Solomon speaks unto all Israel, viz. to the Captains, the Judges, and to every Governor, the Chief of the Fathers: So the Elders of Israel are expounded to be the Chief of the Fathers of the Children of Israel. E.P.c. 2. § 10.
Judg. 21. 16.
Ver. 1. 2.
1 King. 8. 12.
2 Chron. 5. 2.

But I am less edified with your Notion, in making any of the Tribes to have set a Judge, or Captain over themselves distinct from the rest of the Tribes of Israel. For the Example you quote of Abimelech makes directly against you; it being said, Verse 22d of that Chapter, that Abimelech reigned three Years over Israel; and in the next Chapter it is said, there arose to defend Israel, Tola the Son of Puah; and that he judged Israel, that is, all the twelve Tribes, twenty Years: And if Gideon, the Father of Abimelech, was Judge over all Israel, as it appears by the Story he was, it will likewise follow, that Abimelech his Son succeeded (though by Force and Murder) into the same Power. It is likewise as plain, (notwithstanding what you have said to the contrary) that the Elders of Gilead did not alone make Jephthah their Head or Captain. For though I grant Jephthah tells them, that it he fought, and delivered them from the Children of Ammon, that he would be their Head; yet it is plain by the 11th Verse of that Chapter, that Jephthah went with the Elders of Gilead, and it was the People (viz. of all Israel) made him Head and Captain over them; and it appears, that Jephthah uttered all these Words before the Lord in Mizpeh; where it appears by the 17th Verse of the former Chapter, the Children of Israel were then assembled and incamped.

Nor am I yet satisfied, but that though God, out of a special Love and Care to the House Israel, did chuse to be their King himself, yet did he govern them at that time by his Vice-Roy Samuel, and his Sons: And therefore God tells Samuel, They have not rejected thee, but me, that I should not reign over them. It seems they did not like a King by Deputation, but desired one by Succession, like all the Nations. All Nations belike had Kings then, and those by Inheritance, not by Election; for we don't find the Israelites prayed that they themselves might chuse their own King: They dreamt of no such Liberty, and yet they were the Elders of Israel gathered together. If other Nations had elected their own Kings, no doubt but they would have been as desirous to have imitated other Nations, as well in the electing, as in the having a King: And therefore I am sure there is nothing to be found in Scripture that countenances your Notion of the Peoples having a right to elect their own King. But this only by the by.

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I. P. C. 1. 7.

But to prosecute the Matter in hand : When God gave the *Israelites* Kings, he re-establiſh'd the ancient, and prime Right of Lineal Succeſſion to Paternal Government. And whenſoever he made choice of any ſpecial Perſon to be King, he intended that the Iſſue alſo ſhould have benefit thereof, as being comprehended ſufficiently in the Perſon of the Father, although the Father only was named in the Grant. Which Lineal Right of Succeſſion continued in the Family of *David* until ſuch time as his Succeſſors, by their Idolatry, ſo far provoked God's Anger as to deliver them up to the King of *Babylon*, under whoſe, and his Succeſſors Power, they, and their Poſterity, continued Subjects for many Ages.

Viſ. J. han.
Marſhami
Chron. Can.
ſect 11. 291.
292, & 293.

1 Kings 6. 1.

F. I ſhall not diſpute any farther with you (ſince I ſee 'tis to no purpoſe) concerning the Government of the *Israelites*, whether it was Monarchical or Ariſto-cratical before the Reign of *Saul* ; nor yet ſhall I poſitively aſſert, that *Abimelech* or *Jephthah*, and other of the Judges, were Rulers of ſome particular Tribes only. Yet very learned Men are of this Opinion, ſince they can find no other way, but by a Synchroniſm in the Times of the Judges, as alſo of the Years of Reſt, and Servitude, as may appear from *Judges* 10. ver. 6, 8. compared with *Judges* 13. 1. to reconcile that great Difference that will be found in the ſacred Chronology, from the Time of the Children of *Israel's* coming out of *Egypt*, to the fourth Year of *Solomon*, in which the Temple was begun to be built, which doth amount to four hundred and eighty Years ; whereas, if you pleaſe to take the pains to caſt up the Years from the Children of *Israel's* coming out of *Egypt*, to the beginning of *Saul's* Reign, according to the common Account of the Years of the Judges, reckoned with the Reigns of *Saul*, and *David*, to that time, &c. it will amount to 600 Years, which is more by 120 Years than all the time from the ſaid *Epocha* to the fourth Year of *Solomon* taken altogether.

But as for the ſeveral Tribes alone conſulting and ordering their own Affairs, it is ſo plain, from the Examples of the People, and Princes of *Gilead*, as alſo from that of the *Danites*, that you have nothing to object againſt it. And ſo likewiſe in the Inſtance of all the Children of *Israel* meeting and conſulting what to do with the *Benjamites* ; where, ſince you cannot deny the Matter of Fact, you have no way to evade it, but by ſuppoſing I know not what Kingly Authority in the Fathers of particular Families, whom you do ſuppoſe to have then bore the only ſway ; becauſe it is ſaid, in that Chapter you quoted, that in the Conſultation after this War, the Elders of the Congregation propoſed it to them, ſaying, *How ſhall we do for Wives for them that remain, ſeeing the Women are deſtroyed out of Benjamin ?* And then follows the Reſult of the Congregation in the next Verſe ; *And they ſaid* (viz. all the Congregation agreed) *that there muſt be an Inheritance for them that be eſcaped out of Benjamin, &c.* all which amounts to no more than what I granted at firſt, that the Heads, or Elders of the Tribes preſided in this Aſſembly, and put the Queſtion to them : Which is ſo neceſſary in all great Aſſemblies, that without ſuch Officers they cannot come to any Reſolution ; and therefore you ſhould do well to prove the Monarchical Power of theſe Elders by ſome better Authority than this Text.

But if the Judges had Monarchical Power, as you ſuppoſe, notwithſtanding all you have ſaid againſt the Peoples electing them, it plainly appears, by the Examples of *Abimelech* and *Jephthah*, that the People did often elect a Judge, or Captain over them, without any Nomination by, or Inſpiration from God.

But to return to that which is moſt material : Your ſuppoſed Reſtauration of *Patriarchal Government* under *Moses* and *Joſhua*, after the *Israelites* returned from the *Egyptian* Bondage, I cannot but here by the way take notice, that the Truth will ſometimes ſlip from you before you are aware : For if it be true what you at firſt aſſerted, at our laſt Meeting, *That a Servant, or Slave, and a Subject, were all one at the firſt ; and alſo that all Monarchs are endued with Fatherly Power ;* then if *Pharaoh* was a Monarch, the Children of *Israel* were not, according to your Principle, brought into Bondage by *Pharaoh*, but they were only adopted into another Fatherly Power. But you ſhould have done well to have ſhewn more clearly than you have hitherto done, that this *Patriarchal Jurisdiction* was exerciſed by *Abraham*, *Iſaac* or *Jacob* before the Deſcent into *Egypt*, ſince all the Inſtances you have yet given of ſuch a Power, have proved very unlucky. For though I read in *St. Stephen's* Speech in the *Acts*, that the *Patriarchs* moved with *Envy* ſold *Joſeph* into *Egypt* ; yet is it no where mentioned, (nor I believe will you your ſelf affirm) that

Act 7. 9.

that these Patriarchs ever had a *Monarchical Power*. For 'till *Jacob* went into *Egypt*, that Power was solely in him, according to your Principles; and after that in *Pharaoh* as King of *Egypt*: So that though I can find the Word *Patriarch* (but once) in Scripture, yet I can see no ground for your *Patriarchal Authority*, or *Jurisdiction*; and therefore that could suffer no Intermission, which never had any beginning in Nature.

But after this you tell me, that God chose *Moses*, and *Joshua* successively to govern as Princes, in the place of those Supreme Fathers, or Patriarchs; which is easily, I confess, affirmed, only it wants Proof: For though you endeavour to prove that all *Paternal Power* was Regal, yet it still remains unproved that all *Regal Power* is Paternal. It is true, that God did appoint *Moses* and *Joshua* to be the Rulers of his People under him; but that doth not at all make out that they succeeded in the stead of Supreme Fathers, much less that they succeeded as Heirs, or Successors, to the *Patriarchal Power* of *Adam*. For *Moses* and *Joshua* being chosen by God to be Rulers of his People, will no more prove, that Government belonged to *Adam's* Heir, as to his Fatherhood, than God's chusing *Aaron*, of the Tribe of *Levi*, to be Priest, will prove that the Priesthood belonged to *Adam's* Heir, or the prime Fathers, since God could chuse *Aaron* to be Priest, and *Moses* Ruler over *Israel*, though neither of those Offices were ever settled on *Adam's* Heir, or the first Patriarchs. So likewise for what you say concerning God's raising up the Judges to defend his People, proves *Fatherly Authority* to be the Original of Government just after the same rate; and cannot God raise up such Men, unless *Paternal Power* give a Title to their Government? T.T.G. p. 201.

But to come to your darling Instance, the giving of the *Israelites* Kings, whereby you suppose God re-establish'd the antient prime Right of Lineal Succession to Paternal Government. This I can by no means understand; for if by Lineal Succession, you mean to *Adam*, I desire to know how you will make it out, that either *Saul*, or *David* could be Heirs of *Adam's* Power? or how the Power that those Kings were endued with by God, was the same Power which *Abraham*, *Isaac*, and *Jacob* enjoyed before. For if you please to consider it, your Hypothesis consists of two Propositions: The first is, that all *Paternal Power* is the same with *Regal Power*; which if it be proved not to be true, the other convertible Proposition, viz. that all *Regal Power* is Paternal, will likewise be as false. Nor is what you said last of all any truer than the rest, that whensoever God made choice of any Person to be King, he intended that the Issue (I suppose you mean his Issue) should have the benefit thereof: For either *Moses*, and *Joshua*, and the Judges, were no Kings, (though you have asserted the former to be so) or else they had not the benefit of this Grant. But certainly *Saul* was a King, and yet his Issue never succeeded. But you speak very warily to suppose this Grant to be made to the Issue in general, without specifying in particular who should enjoy it; because I suppose you are sensible, that *Solomon*, whom God expressly appointed to be *David's* Successor; and *Jehoahaz*, whom the People of the Land made King in the room of *Jehoiakim*, were neither of them eldest Sons of the Kings their Fathers. To conclude, I desire you would shew me what Relation or Title all Kings, or Princes now a-days have, or can claim as Heirs to *Adam*, or *Noah*; or how that Power with which God endued those Fathers of Mankind, is the same which you say all Princes, or Monarchs, may now claim to be given them by God: For, I confess, I can see no Relation at all between them. 2 Chron. 26. 1.

M. It may indeed seem absurd to maintain, that Kings now are the Fathers of their People, since Experience shews the contrary. It is true, all Kings are not the natural Parents of their Subjects, yet they all either are, or are to be reputed the next Heirs to those first Progenitors, who were at first the natural Parents of the whole People, and in their Right succeed to the Exercise of Supreme Jurisdiction; and such Heirs are not only Lords of their own Children, but also of their Brethren, and all others that were subject to their Fathers. And tho' I have all along supposed, that *Paternal Government* was at first *Monarchical*, yet I must likewise grant, that when the World was replenished with People, that this *Paternal Government* by Succession ceased, and a new kind of it started up either by Election, Conquest, or Usurpation; yet this was still *Paternal Power*, which can never be lost, or cease, though it may be transferred, or usurped; or it may be ordained anew in a Person who otherwise had no Right to it before. Thus F. P. § 8.

God, who is the giver of all Power, may transfer it from the Father to the Son, as he gave *Saul* a Fatherly Power over his Father *Kish*.

Ibid. p. 70.

So that all Power on Earth is either derived or usurped from the Fatherly Power, there being no Original to be found of any other Power whatsoever; for if there should be granted two sorts of Power without any Subordination of one to the other, they would be in perpetual strife which should be Supreme, for two Supremes cannot agree; if the Fatherly Power be Supreme, then the Power of the People must be Subordinate, and depend on it; if the Power of the People be Supreme, then the Fatherly Power must submit to it, and cannot be exercised without the Licence of the People, which must quite destroy the frame and course of Nature.

F. If this be all you have to say for the Proof of so weighty an Hypothesis, I confess I wonder how you, or any rational Man can lay so great stress upon it; For though I should grant you, that some Fathers of Families at first became, by the tacit or express *Consent* of their Children and Descendants, to be Kings or Princes over them; doth it therefore follow, that all Kings govern by *Right of Fatherhood* at this Day.

'Tis true you tell me, that all Kings, *though they are not now the natural Fathers of their People, yet are still to be esteemed as such by them, as succeeding either as Heirs, or Successors to these that were so.* I grant indeed, if any Kings now adays could prove themselves right Heirs to *Adam* or *Noah*, this were somewhat to the purpose; but to talk of a Paternal Power, proceeding from Election, Conquest, or Usurpation, is perfect *Jargon* to me; for pray tell me, can a Man become endued with Paternal Power over me, by my Electing him to be my King? Or can a Man, by Conquest or Usurpation, oblige me to yield him a Filial Duty, and Obedience? For if this were so, if a Father of a separate Family (such as *Abraham* was) should be conquered by the Head of another separate Family, nay though he were a Thief or a Robber, if once the true Father were killed or destroyed, all the Children and Descendants of the Family must pay the same Duty and Obedience to this unjust Conqueror or Robber, as to their true Father: And the same may be said in Usurpations, in case after the Death of such a Father of a Family, a younger Brother or Nephew should get Possession of the House and Estate, and force all his Brethren and Kinsmen to submit to him, they must then all own him to be endued by God with the same Paternal Power, which their Father or Grand-father had; and consequently must Honour and Obey him as their true Father: Both which Examples, being contrary to the common Sense and Reason of Mankind, may shew you, how absurd this *Hypothesis* is; whereas indeed, Fatherhood being a Relation of Blood, the Duty and Respect we owe to our Father, proceeding from that Piety and Gratitude we owe him, both for our *Generation* and *Education*, how can this Relation, or these Obligations be ever transferred to, or usurped by another; so that any other Man can become my Father, or I owe him the like Filial Duty and Respect, as to him that begot me and brought me up?

And though I grant that God may confer a *Regal Power* on whom he pleases, either by his express Will, or the ordinary course of his Providence; yet when such a Person, who was not a King before, doth become so, I utterly deny that the Power he hath then conferred upon him, is a *Paternal Power* in relation to his Subjects; which is evident from your own Instance of *Saul's* becoming a King over his Father *Kish*. For though you say, *that God then conferred a Fatherly Power on Saul over his own Father*, this is a great mistake: For then *Saul* would have been immediately discharged from all the Duties of Piety and Gratitude, which he owed his Father; and they were all transferred from *Kish* to *Saul*; so that after he became King, he might have treated his Father with no more Respect or Deference, than any other Subject; which is contrary to God's Commandment, that bids all Men *Honour their Father and Mother*. And I know not how Kings can be excepted out of this Precept. So that your mistake arises from this preposterous confounding of *Paternal Authority* with *Regal Power*: And because *Adam*, *Noah*, or any other Father of a separate Family, may be a Prince over it in the State of Nature, that therefore every Monarch in the World is also endued with this *Paternal Power*: Which that they are distinct, may farther appear from your own supposed *Monarchical Power* of *Adam*, who though granting him to have been a Prince over his Posterity, yet did not this discharge any of his

his Descendants from their Duty and Obedience to their own Father: And though I confess you talked at our last Meeting of a *Fatherly Power* to be exercised in subordination to the *Supreme Fatherly Power* of *Adam*; yet this is a meer *Chimera*: For *Filial Honour* and *Obedience*, being due by the Commandment only to a Man's own natural Father, can never be due to two different Persons at once, since they may command contradictory Things; and then the Commandment of *Honour* (that is, obey) *thy Father*, cannot be observed in respect of both of them; and therefore granting *Adam*, or *Noah*, to have exercised a *Monarchical Power* over their Children and Descendants, it could not be as they were Fathers or Grand-fathers, when their Sons or Grand-children were separated from them, and were Heads of Families of their own, for the Reasons already given; so that if they were Princes in their own Families, whilst their Sons or Grand-children continued part of them, it was only as Heads or Masters of their own Families, but not by any such *Patriarchal* or *Paternal Authority* as you suppose. But as for the Conclusion of your Discourse, it being all built upon this false Foundation, that all Power on Earth is derived or usurped from the *Fatherly Power*; I need say no more to it: For if that be false, all that you argue from thence, concerning the subordination of all other Powers to this, will signify nothing.

M. I think I can yet make out my *Hypothesis*, notwithstanding all you have said against it: For though I grant the *Paternal Relation* itself can never be usurped or transferred; yet you may remember, I at first affirmed, that *Adam* was *F. P.* not only a Father, but a King and Lord over his Family, and a Son, a Subject, a Servant, or a Slave, were one and the same thing at first; and the Father had Power to dispose of, sell, or alien his Children to any other; whence we find the Sale and Gift of Children to have been much in use in the beginning of the World, when Men had their Servants for a Possession and an Inheritance, as well as other Goods; whereupon we find the Power of Castrating or making *Eunuchs* much in use in old Times. And as the Power of the Father may be lawfully transferred, or aliened; so it may be unjustly usurped. And though I confess no Father, or Master of a Family, ought to use his Children thus cruelly and severely, and that he sins mortally if he doth so; yet neither they, nor any Power under Heaven can call such an *Independent Father* or *Monarch* to an account, or punish him for so doing.

F. I am glad at last we are come to an Issue of this doughty Controversy. And though I forced you at our last Meeting to confess, that Fatherly Power was not despotical, nor that Fathers upon any account whatsoever were absolute Lords over their Children, and all their Descendants, in the State of Nature; yet now I see, to preserve your first *Hypothesis*, you are fain to recur to this Despotical Power of Fathers in the State of Nature: Because without supposing it, and that it may be transferred or usurped, Princes at this Day (whom without any Cause you suppose to be endued with this Paternal, Despotick Power) could never claim any Title to their Subjects Allegiance. And then much good may do you with your, and Sir R. F's. excellent discovery: For if, as you yourself acknowledge, Princes are no longer related in Blood to their Subjects, any nearer than as we all proceed from *Adam* our common Ancestor, that Relation being now so remote, signifies little or nothing, so that the true Paternal Authority being lost (as you confess) the Despotick Power of a Lord over his Servants, or his Slaves, only remains: Since therefore you make no difference in Nature between Subjects and Slaves, then all Subjects lie at the Mercy of their Kings, to be treated in all things like Slaves, whenever they please; and they may exercise an absolute Despotick Power over their Lives and Estates, as they think fit: So that I can see nothing that can hinder them from selling their Subjects, or castrating them, as the King of *Mingrelia* doth his Subjects at this Day; and as the *Great Turk* and *Persian Monarchs* do use those Christian Children, whom they take away from their Parents to make *Eunuchs* for their *Seraglio's*; and then I think you have brought Mankind to a very fine pass, to be all created for the *Will* and *Lust* of so many single Men, which if it ever could be the *Ordinance of God*, I leave to yourself to judge.

M. I was prepared for this Objection before, and therefore I think it will make nothing against this *absolute Power*, with which I suppose God to have endued *Adam*, and all other Monarchs at the first: So that I am so far from thinking that this Doctrine will teach Princes Cruelty towards their Subjects, that on the *B. C. P. §. 3.*
con-

contrary, nothing can better inculcate their Duty towards them: For as God is the Author of a *Paternal Monarchy*; so he is the Author of no other. He introduced all but the first Man into the World, under the Subjection of a *Supreme Father*, and by so doing, hath shewn, that he never intended there should be any other Power in the World, and whatever Authority shall be extended beyond this, is accountable to him alone; so that Princes are bound to treat their Subjects, as their Children, with Mercy and Lenity, as far as they are capable of it, and not as their Brutes. And granting that Subjects and Servants, or Slaves, were at first all one, yet I think even they ought to be treated only as younger Children, yet as Children still: Nay even conquered People, that are in some Countries treated as Slaves, and but a little better than Brutes, have certainly a very good Appeal to the Tribunal of God against their Princes, who will undoubtedly right them in another World, if they suffer patiently in this. If it be the Character of a good Man, that he is Merciful to his Beast, I doubt not but the very Brutes have a Right to be governed with Mercy and Justice, and that God who is their Creator, as well as ours, will punish cruel Men if they tyrannize over them; and much more if any Man shall exercise Cruelty on another Man, who is of the same, not only Nature, but Blood.

Whereas all other *Hypotheses* leave the Prince at Liberty to make his Bargain with his Subjects as well as he can; and if they be brought by Force, or Fraud, to an entire Submission at Discretion, they may then be treated accordingly, and must stand to their Compact, be the Terms never so unequal, and then the Case of a Man, and a Brute, may differ very little; and if the Subject may resist, the Prince may take care to prevent it, and the War may be just on both sides, which is impossible.

I could likewise shew you many other Benefits that would accrue both to Princes, and Subjects, were this *Hypothesis* but once generally taught, and believed by both of them.

F. I pray, Sir, spare the giving yourself that trouble, for I will not dispute how honestly this *Hypothesis* may be designed, or what mighty Feats it might do, were it once universally received. But this neither you, nor I, can ever expect will come to pass, because neither Princes, nor People, will ever believe it to be true: For in the first place, the People will never be convinced of it, it being above a vulgar Understanding, that their Princes, whom they are very well assured are not their Fathers, nor yet right Heirs to *Adam* or *Noah*, should notwithstanding lay claim to a *Paternal Authority* over them. In the next place, Princes can never believe that they are Fathers of their People, for the same Reason: I grant indeed, that they may be very willing to believe one half of your *Hypothesis*, that they are absolute Lords and Masters over them, and so would be willing upon that account to use their Subjects like Slaves; but that they should look upon themselves as Fathers of their People, and the Heirs or Assigns of *Adam* or *Noah*, I think no Prince in Christendom can be so vain to believe. So that whatever Power *Adam* or *Noah*, or any other Father, might been intrusted with by God, because of that natural Affection which they were supposed to bear toward their Children; yet sure Princes at this Day can lay no claim to it, since none but true Fathers can be endued with this *Paternal Affection*.

And whereas you suppose, that Princes ought to treat their Subjects, nay even those that are conquered, like Children, and not like Slaves, or Brutes; this can have very little effect upon them, who can as little believe it, as the People. For if Monarchical Power is not Paternal (as I think I have clearly made out) then there can lie no Obligation upon Monarchs to treat their Subjects like Children: And therefore, since the *Despotical* or *Masterly Power* only remains, which is ordained principally for the good and benefit of the Master, and not of the Servant or Slave; who can blame Princes, if they exact the utmost of their due Prerogatives, and so treat their Subjects like Slaves, whenever it serves their Humour or Interest so to do? Nor are they any more to be blamed for thus exerting their Power, than a Master of *Negroes* in the *West-Indies* is, for making the best of the Service of those Slaves, whom he hath bought with his Money, or are born in his House: Whom though I grant he is not to use like Brute Beasts, for the Reasons you have given; yet doth it not therefore follow, that he is obliged to use them like his younger Children; for then sure he could not have a Right to keep them for Slaves as long as they lived, and to let them enjoy nothing

thing but a bare miserable Subſiſtance. And there is very good reaſon for this, for almoſt every Planter in *Barbadoes* knows very well the difference between the Relations of a Father, a Maſter, and a Prince, and that the one is not the other; and it is from your jumbling together theſe three different Relations, of a Son, a Slave, and a Subject, that hath led you into all theſe miſtakes. For though it ſhould be granted, that the Right of a Maſter over his Slaves may be acquired by Conqueſt, or aſſigned to, or uſurped by another; yet certainly, the Authority or Relation of a Father, and the Deſpotical or Civil Power of a Monarch, can never be acquired by Conqueſt, nor yet uſurped, without the conſent and ſubmiſſion of the Children and Subjects.

And therefore to conclude, I do not think your *Hypotheſis* one jot the better, by your founding it upon an *Imaginary Paternal Power*, rather than upon *Compact*, which I am ſure can never be made upon ſo unequal Terms, as to render the Caſe of a Man and a Brute very little different; ſince it would be to no purpoſe for any Subject to make a Bargain with their Monarch, or Conqueror; and yet, to leave themſelves in as bad, or worſe condition, than they were in the State of Nature: So that however convenient your *Hypotheſis* may be, either for Prince, or People, it ſignifies no more than the Popiſh *Hypotheſis* of the *Infallibility of the Pope*, and a *General Council*, which becauſe they ſuppoſe neceſſary, and is indeed very beneficial for their Church; therefore God had conferred it upon them: But how falſe a way of Reaſoning this is, hath been ſufficiently demonſtrated. The Application of this Compariſon is ſo obvious, that I leave it to you to make.

M. I cannot but think, for all you have yet ſaid, that God hath endued all Princes with a *Paternal Authority*, and for this, I have the Church of *England* on my ſide, which in its Catechiſm, in the Explanation of the Duties contain-F. P. 10.
F. O. G. p. 254. ed in the fifth Commandment, *Honour thy Father, &c.* doth comprehend under that Head, not only to *Honour and Succour our Fathers and Mothers*, but alſo to *Honour and Obey the King, and all them that are put in Authority under him*; as if all Power were originally in the Father: So that this Command gives him the Right to govern, and makes the Form of Government Monarchical. And if Obedience to Parents be immediately due by a natural Law; and Subjection to Princes, but by the Mediation of an Humane Ordinance, what reaſon is there, that the Laws of Nature ſhould give place to the Laws of Men? As we ſee the Power of the Father over his Child gives place, and is ſubordinate to the Power of the Magiſtrate. And that this is not the Doctrin of Chriſtianity alone, but was alſo believed by the beſt Moralists amongſt the Heathens, may appear by this remarkable Paſſage out of *Seneca de Clementia*, which is ſo put to this purpoſe, that I took the pains to tranſlate it into Engliſh in my Com-Lib. I. c. 14. mon-place-Book: Some of which I will now read to you. *What is the Duty of a Prince? That of kind Parents, who uſe to chide their Children ſometimes ſweetly, and at other times with more ſharpeness, and ſometimes correct them with blows. And after having ſhewn, that a good Father will not proceed to diſinherit his Son, or inflict any more ſevere Punishments upon him, till he is paſt all hopes of Amendment; he proceeds thus: No Parent proceeds to Extermination, till he hath in vain ſpent all other Remedies. That which becomes a Parent, becomes a Prince, who is ſtiled without flattery the Father of his Country; in all our other Titles, we conſult their (i. e. the Emperors) Honour. We have called them the Great, the Happy, the Auguſt, and heaped upon ambitious Maſteſty all the Titles we could invent, in giving theſe to them: But we have ſtiled him the Father of his Country, that the Prince might conſider the Power of a Father was given him: Which is the moſt temperate of all Powers, conſulting the Welfare of the Children, and preferring their good before its own.*

And as for your Objection, why Princes cannot be loved and revered, as if they were our Fathers, becauſe not being our Fathers indeed, they may poſſibly want that Natural and Fatherly Affection to their Subjects, and conſequently may tyrannize over them; I think this is eaſily answered: For,

Fiſt, God, who is, and ever was the true Diſpoſer of Kingdoms, hath in his Hands the Hearts of all Princes, and endows them with ſuch Affections as he thinks fit, not only towards the People in general, but towards each particular Perſon: And therefore, as he was the Author of all Government, and is ſtill the Preſerver of it; ſo no inconvenience can happen, but he is able to redreſs it.

Secondly,

Secondly, That there was as great, or rather greater Inconveniencies, which sprung at first from the too great Lenity of these natural Princes, for want of Power or Will to punish the disorders of their Subject Children, as have ever sprung since from the Tyranny and Cruelty of the worst Princes: And I believe, to this was owing that excessive Wickedness, which forced as it were God Almighty to put an end to the first World, by that time it had stood about 1600 Years. And we see afterwards *Eli* and *Samuel*, good Men, and severe Judges towards others, were yet too indulgent to their own Children; which shews the weakness of your Reasons, and the greatness of the Wisdom of God, in making all Government to spring from *Paternal Power*, which is the mildest of all Powers, and to descend by degrees to *Hereditary Monarchies*, which are the *Divinest*, the most *Natural*, and the best of all Governments, and in which the People have the least Hand.

F. I see plainly, that you think the *Laws of Nature* or *Reason* are not on your side, and therefore you are forced to recur not to the express Words of Scripture, but to the Paraphrase or Explanation of them in our Church Catechism, which certainly never was intended to have that consequence drawn from it which you have made; for though you are pleased to omit one part of the Commandment with an *&c.* yet the Words are, as you yourself must acknowledge, *Honour thy Father, and thy Mother*; and if from *Honour thy Father*, you will gather that all Power was *Originally* in the Father, it will follow by the same Argument, that it must have been as *Originally* in the Mother too: *Father, and Mother, or Parents*, being mentioned together, in all Precepts in the Old and New Testament, where Honour or Obedience is enjoined on Children: And if these Words, *Honour thy Father*, must give a right to Government, and make the Form also Monarchical; and if by these Words must be meant Obedience to the *Political Power* of the *Supreme Magistrate*, it concerns not any Duty we owe to our natural Fathers, who are Subjects; because they, by your Doctrine, are divested of all that *Power*, it being placed wholly in the Prince, and so being equally Subjects, and Slaves with their Children, can have no Right by that Title to any such Honour or Obedience, as contains in it *Civil Subjection*. But if *Honour thy Father, and thy Mother*, signifies the Duty we owe our natural Parents, (as by our Saviour's Interpretation, *Matthew* 15. 4. and in all the other places 'tis plain it doth) then it cannot concern *Political Obedience*, but a Duty that is owing to Persons who have no Title to Sovereignty, nor any *Political Authority*, as Monarchs over Subjects. For Obedience to a private Father, and that *Civil Obedience* which is due to a Monarch, are quite different, and many times contradictory, and inconsistent with each other. And therefore, this Command, which necessarily comprehends the Persons of our natural Fathers and Mothers, must mean a Duty we owe them distinct from our Obedience to the Magistrate, and from which the most absolute Power of Princes cannot absolve us. And to make this yet plainer, suppose upon your *Hypothesis*, that *Seth*, as eldest Son of *Adam*, was Heir of all his *Patriarchal Power*, how could all his Brethren and Sisters Honour, that is, Obey *Eve* their Mother, supposing *Seth*, and *her*, to have commanded them things contradictory at the same time?

So, that though I grant the Compilers of our Church Catechism did intend in this Explanation to comprehend all the great Duties towards our Governors; yet it is plain, they never dreamed of this far-fetched Inference, that you have drawn from their Explanation of it; for though under this Command of *Honour thy Father, and thy Mother*, they do indeed comprehend Obedience and Honour to be due to the King, &c. this no more proves that they believed all *Kingly Power* to be *Paternal*, than that because they likewise there infer from this Command, a Submission to be due to all *Governors, Teachers, Spiritual Pastors, and Masters*, that therefore all these Parties here named do likewise derive their Authority from *Adam's* Fatherhood; or that because under the Command against bearing *False Witness*, we are taught to refrain our Tongues from *Evil Speaking, Lying, and Slandering*, that therefore all Lies, and Evil Speaking whatsoever, is downright bearing False Witness against our Neighbour; since nothing is more certain, than that a Man may commit either of the former, without being guilty of the latter. And to answer your Query, if Obedience to Parents be immediately due by a *Natural Law*, and Subjection to Princes but by a *Humane Ordinance*, what reason is there that

that the *Laws of Nature* should give place to those of *Men*? I can easily reply, that the *Power* of a Father over his Child gives place and is subordinate to the *Supreme Powers*, because they are both ordained so by God in the *Law of Nature*; it being highly reasonable, that the good of a private Family should give place to the common good of the Commonwealth, which is a sufficient reason, and extends to all Nations, which never so much as heard of the Ten Commandments.

But to come to your Quotation out of *Seneca*, I think this hath a great deal less weight in it, than your Argument from the Fifth Commandment: For though this Philosopher writ to the Emperor, to persuade him to Clemency; yet this I am sure of, that he never dreamt of this Notion of *Adam's Sovereignty*, or believed that every Prince was endued with *Paternal Authority*, because amongst other Titles he was stiled *Pater Patriæ*. And therefore what this Author here says, is to be looked upon only as a Rhetorical Flourish, or, at the most, to be understood but in a Metaphorical sense; the Arguments of this Author not being to be always taken strictly as a *Logician*, but only as an *Orator*, who was to make use of all Appearances of Reason to persuade a young Prince to Mercy and Clemency; and yet all this was not sufficient, as *Seneca* himself found, before he died, by woful Experience. And *Seneca* very well knew, that *Tully* was stiled *Pater Patriæ* by the Senate, though he was never endued with your *Imperial* or *Paternal Authority*.

But to reply a little to your Answer against my last Argument, that Princes not being our *Natural Fathers*, must often want that *Natural* and *Fatherly Affection* towards their Subjects, and therefore may tyrannize over them; I think the first part of your Reply will make nothing in confutation of what I have said: For though I will not deny but God, who hath the *Hearts of Princes in his Hands*, may sometimes endue them with such Affections as he thinks fit, not only towards the People in general, but towards each particular Person; yet this may be as well evil as good Affections: As God is said in *Judg. 9.* to have sent an evil Spirit between *Abimelech*, (one of your usurping Monarchs) and the Men of *Shechem*, his Subjects: And therefore God may as well send the one for the punishment, as the other for the benefit of a Nation: And that God is more likely to incline the *Hearts of Princes* to such evil, than good Affections towards their Subjects, may appear from Mankind's more often deserving God's Anger, for their evil Deeds, than Favours for their good ones.

And I desire you would shew me in how many *Absolute Monarchies* now in the World, God Almighty is pleased to declare this wonderful Operation of these *Fatherly Affections* towards their People. I pray deal ingenuously, and tell me, is it to be found in our *European Monarchies*, where most Princes do not only miserably harraß and oppress their Subjects, by intolerable Taxes, and standing Armies, till they reduce them to the lowest condition of Beggary and Desperation; and where, for the least differences in Religion, they take away their Subjects Lives by that cruel Tribunal of the Inquisition, without any fair or legal Trial; or else, where, notwithstanding all Edicts, Oaths, and Vows to the contrary, they seize upon, and spoil their Subjects of their Estates, and imprison and torment their Persons by those booted Apostles the *Dragoons*; because Faith is not to be kept with Hereticks; or else, in another Country, where the Prince took upon him a Prerogative to dispense with all Laws at his pleasure, and to imprison, and turn Men out of their Freeholds, contrary to the known Laws of the Kingdom? Or, to conclude, must we look for these *Divine Operations* amongst the *Eastern Monarchs*, where they treat their Subjects like Slaves, and allow them no Property either in Lands, or Goods, farther than they think fit, and to have their Persons and Lives wholly at their Mercy, to be castrated, made Slaves of, or killed, as often as it shall please their Humour or Passion? And I doubt, if you will but read Antient as well as Modern Histories, and also survey the State of Mankind in all the *Absolute Monarchies* between *France* and *Japan*; you will find more frequently Examples of the evil, than good Affections of these your Artificial Fathers towards their Adopted Children.

M. I cannot deny, but you have given a very Tragical Account of the *Tyranny* and *Oppressions* under divers *Absolute Monarchies* now in the World; yet this is not the fault of the Government, but of the evil Principles, bad Education, or Tempers of those Monarchs; as also, oftentimes from the unquiet and rebel-

B. C. P. 53. lious Disposition of their Subjects, from the distrusting of which, they place all their Security in standing Armies, and Guards; so that I must grant, that all those Governments that are maintained by Armies too strong for the Subjects in general, are uneasy, and degenerate into *Despotick Monarchies*, and are unsafe both to the Prince and People. And to let you see, that it is not my intention to maintain or defend *Oppression* or *Tyranny*, I must freely assert, with Sir R. F. (whose Principles I here take upon me to maintain) that all Princes are bound to treat their Subjects as their Children, and that it is contrary to the Nature of Mankind, to make their Offspring Slaves; and that all Kings, (nay Conquerors too) are bound to preserve the Lands, Goods, Liberties, and Lives of all their Subjects, not by any *Municipal Law*, but by the *Natural Law* of a Father, which binds them to ratify the Acts of their Forefathers and Predecessors in things necessary for the publick good of their Subjects: But yet you have not done fairly, not to take notice of the great Oppressions that are exercised in some *Commonwealths* likewise towards their Subjects, which if you would please to consider, and weigh the fewness of these against the great number of Monarchies now in the World, I believe you will have good cause to confess, that there are many more good *Monarchs*, than equal *Commonwealths*. And I do believe there was as much *Tyranny* exercised in these three Kingdoms during our late *Civil Wars*, and afterwards under the Government of the *Rump* and *Cromwell*, till the Return of the late King *Charles*, as in all the *Absolute Monarchies* between *France* and *China*, or from the *North* to the *South Pole*. And it is very remarkable, that when *Oliver Cromwell* set up the most *Absolute* and *Tyrannical Government* that ever was in this Island, there was yet no noise of any Fears or Jealousies of it in all his Times.

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f. 12, 13.

F. I am very well pleased to find you so heartily agree with me, in condemning of Tyranny and Oppression in *all sorts* of Governments whatever. And I do assure you, I do as little approve of it, if it be any where exercised in *Commonwealths*, as you can do in *Monarchies*: Only I must needs tell you, I am not at all of your Opinion, that the Oppressions or Abuses, committed by the Magistrates in *Commonwealths*, are to be compared with the Tyrannies, and Cruelties exercised by *Absolute Monarchs*, and their Subordinate Ministers. For though I grant they often lay very severe Taxes and Impositions upon their Subjects, especially such as they have acquired by Conquest, and so act like *Absolute Monarchs* over them, yet are these Oppressions not at all to be compared to those under *Arbitrary Monarchies*; for though perhaps divers *Commonwealths* may impose greater Taxes upon their Subjects than some Neighbouring Monarchs; yet doth it not follow, that their Government is more severe for all that; since the People having an opportunity by free Trade, and Liberty of Conscience in such *Commonwealths*, to acquire a greater share of Riches, are also thereby enabled to contribute more to the maintainance of the Government, by which they reap so great Benefits. Thus we see a Citizen of *Amsterdam* is able to pay six times the Taxes of one of *Antwerp*: And therefore I dare, for all that, appeal to any common Subject (though a Papist) of the *United Provinces*, whether he had not rather live under the States of *Holland*, than under the *French King*; or to any Subject of the *Commonwealths* of *Venice*, *Genoa*, or *Lucca*, whether he doth not prefer his Condition, as bad as it is, to that of any of the Subjects of the Pope, Duke of *Florence*, or any other *Italian Prince*; not to go over into *Turkey*, and those other *Eastern Monarchies*, where the Yoke of Slavery lies yet more heavy upon the Subjects than in *Europe*.

And as for what you say, in the comparing of those *Illegal Arbitrary Proceedings*, that were exercised in *England*, during the late *Civil Wars*, and afterwards, till the King's Coming in, I must beg your pardon, if (besides the great Hyperbole in your Expressions on that occasion, which I am sure are very far from Truth) I impute those Miscarriages, not as the fault of this or that sort of Government, but rather to a *powerful Faction*, back'd by a *standing Army*, which was more like a Tyranny, or corrupt Oligarchy, than any settled Government. Nor is what you say concerning *Oliver's Government* more true than the former; for all Men, except his own Faction, were not only afraid, but really sensible of the loss of their Liberties under his Tyrannical Usurpation: Though indeed, there was a very good reason, why there should be fewer Fears or Jealousies of it, than in his late Majesty's Time, when his Government began to grow uneasy through the Peo-

ples Fear of Popery and Arbitrary Government, which they had no jealousy of in *Cromwell's* Time; and as for the latter, they had no occasion to fear that which had already happened.

But that you may not mistake me for a *Commonwealths* Man, I must so far agree with you, that to condemn Monarchy as such, were to repine at the Government of God himself; so that I also grant, that the fault lies not in the Form of Government, but in the frail Nature of Men, which can rarely administer that great Trust committed unto them, as becomes what they take upon them to be, *God's Vicegerents upon Earth*: And I must own, that I esteem *Monarchy limited by known Laws, as the best and most equal Government in the World*; and under which both Prince and People may live most happily and easily, if each of them will be but contented with their due share.

But I beg your pardon for this Digression; and to come to a Conclusion, I must freely tell you, it is not a Straw matter, what your's or Sir R. F.'s Principles are concerning the Fatherly Power of Princes; for as long as there is no ground for it in Scripture or Nature; you cannot expect that either Princes or People will ever believe you. Neither is it true, that Princes as Fathers are bound to treat their Subjects in all things like their Children, for then Princes ought to maintain their Subjects, and not Subjects their Princes; since it is the Apostle's Rule, *That Children ought not to lay up for their Parents, but the Parents for the Children*: And though you pretend not to plead for Tyranny or Arbitrary Government, yet I cannot at all understand, why if it were not for this End, you should assert not long since, in your answer to me, that God thought fit to change *Paternal Government* into *Hereditary Monarchy*, because of the excessive Wickedness of Mankind before the Flood, proceeding from the too great Lenity of those *Patriarchal Princes*; in not punishing the disorders of their Subject Children; which is a very bold Assertion; since you know no more than I, what that Wickedness was in particular, for which God drowned the World, much less what was the occasion of it. And therefore, if God thought fit to change *Paternal Power* into *Hereditary Monarchies*, which (as I have proved) do not at all proceed from *Paternal Power*, it will also follow that the Government of your Patriarchs was not sufficient for the well being and happiness of Mankind, or else God would never have thought fit to have altered it for a more cruel and severe way of Government. 2 Cor. 12. 14

But as for what you say concerning those Princes that place all their Security in Guards and Armies too strong for the Subjects, that they are uneasy, and degenerate into *Despotick Monarchies*, (you might better have said Tyrannies) and that they are unsafe both for Prince and People, is very true, and I altogether agree with you in it. But those of your Principles have no reason to find fault with Princes for so doing; for since they do but use their just Prerogative over their Slaves or Vassals, it is but fit that they should be made to undergo that Yoke, whether they will or no, which they would not bear willingly: And as long as Princes look upon themselves to be (what they really are upon your Principles) the Masters, and not the Fathers of their People, as they suppose the Goods and Estates of their Subjects to be wholly at their Disposal, so can they never command them as they please, without the Assistance of *Standing Armies*. Nor have you any reason to complain of those Princes for keeping them too strong for the Subjects to oppose; since, upon your Principles, be they strong or weak, the Subjects are not to resist them. But if Princes, without your extraordinary fondness of using their People like Children, would but always use them like Subjects, with ordinary Justice and Moderation; and not oppress them with excessive Taxes, and unnecessary *Penal Laws* about Religion, you would find there would be no need of *Standing Armies* to keep the People in awe, who would themselves be the best defence not only against Domestick, but Foreign Enemies. And this I'll assure you is a much better Receipt against *Rebellion*, than all your new *Recipe's* of *Paternal Power* in Monarchs, which is not only without all ground of Reason, but above common Apprehensions.

M. You have made a long Speech in answer to my *Hypothesis*, which since you are not satisfied with, I can likewise shew you another very good reason, why the People should love and reverence their Princes; and that is, those great *Liberties* and *Cessions* that all the Monarchs of *Europe* have granted their Subjects,

which are now pass'd into the settled Laws and Customs of those Kingdoms, with which the People ought to be very well contented. Nor ought they to rebel or resist, though they may sometimes out of wantonness and necessity infringe, or intrench upon those Privileges, which they or their Ancestors have conferred upon them; since they can never forget that Power they have originally over them.

F. I do not very well understand what you mean; for I have hitherto supposed that all Subjects have a Property in their Estates, and a Freedom for their Persons by the *Laws of Nature*; and which no *Civil Power* whatever could deprive them of without their Consent: And therefore I desire you would shew me, that if Children, Subjects, and Slaves, were all one at the first, how we in this side of the World came to be in a better condition than those in *Asia* and *Africa*? Or that we *Englishmen* can claim a Property in our Estates, and a Right to our Lives, which the Prince cannot take away, but according to some known Laws?

M. I think I can easily do this, not only in relation to *England*, but any other Kingdom, which is now governed by known Laws, and that upon Sir R. F.'s Hypothesis; which I shall do (as near as I can remember) in the Words of that excellent Person the late Earl of Charendon, in his Survey of Mr. Hobbs's *Leviathan*; who supposes, according to this Hypothesis, That some one of Noah's Descendants was an Absolute Monarch at first over all his Posterity, which might continue in his Line for some Ages, till at last their Relation by Blood to their Subjects was removed at so great a distance, that the Account of their Kindred or Relation to each other was scarce remember'd; whereby they who had the Sovereign Power, still express less Paternal Affection in their Government, looking upon those they governed as meer Subjects, and not as their Kinsmen or Allies; till by degrees, according to the Custom of Exorbitant Power, they (considering only the extent of their own Jurisdiction, and what they might, rather than what they should do) treated them who were under them, not as Subjects, but as Slaves; who having no Right to any thing but what they permitted them, they would allow them to possess nothing, but what they had no occasion to take away. Estates they had none that they could call their own, because when their Prince called for them, they were his: Their Persons were at his Command, when he had either occasion or appetite to make use of them; and their Children inherited nothing but their Father's Subjection; so that they were happy or miserable, as he who had the Power over them, pleased to exercise it with more or less Rigour or Indulgence; yet they submitted alike to both, acknowledging his Dominion to be naturally as absolute as their Subjection and Obedience.

These Princes might for some Ages have pleased themselves with this Exorbitant Exercise of their Power, which though it had been always the same, yet the Exercise of it had been very moderate, whilst there remained the Tenderneſs or Memory of any Relation. But these Princes began at last to discern, and be convinced, that the great strength they seemed to be posseſs of, would in a short time degenerate into weakness, and the Riches they seemed to enjoy, would end in want and necessity, as well in themselves, as in their Subjects; since no Man would build a good House, that his Children could not inherit, nor cultivate their Land with any good Husbandry and Expence, since the profit thereof might be given to another Man: And that if the Subjects did not enjoy the Conveniences of Life, they could not be sure of their Help and Affection, whenever they should have War with another Prince as absolute as themselves; but they would rather chuse to be subject to him, under whose Government they might live with greater Liberty and Satisfaction. And lastly, that if they ingross'd all the Wealth and Power into their own Hands, they should find none who would defend them in the Possession of it: And that there was a great difference between that Subjection which Love and Duty pays, and that which results only from Fear and Force; since Despair often puts an end to that Duty, which Reason, and it may be Conscience, would otherwise have persuaded them still to continue: And therefore, that it was necessary that their Subjects should find ease and profit in Obeying, as well as Kings pleasure in Commanding. These wise and wholesome Reflections might prevail with Princes, for their own, as well as Subjects benefit, to restrain their Power, and to make it less absolute, that it might be more useful; and to give their Subjects such a Property in their Goods, and Lands, as should not be invaded, but in such cases, and on such occasions, as the necessities of the Government really required. But as they found the benefit arising from these Condescensions highly tend to the Improvement of the Riches, and Civility of their Subjects, with all these Additions of Pleasure and Industry which render Man's Life, as well as the Government easy and pleasant, they still in several Generations enlarged these Graces and Concessions to their Subjects, yet reserving all in themselves that they did not

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part with by their voluntary Grants or Concessions. And if we take a view of the several Kingdoms of the World, we shall see another face of things, both of Power, and Riches, in these Governments where these Condescensions and Concessions have been best observed, than in those Kingdoms where the Sovereigns either retain, or resume to themselves all those Rights, or Prerogatives, which are invested in them from the Original Nature of Government; so that there still remains enough in the Princes Hands to be made use of for the preservation of his own Power, and the defence of his Subjects, for whose benefit it was intrusted with him by God. So far the late Great Chancellor.

And these Privileges and Condescensions being once pass'd into constant and standing Laws by the Princes that gave them, and also solemnly sworn to by their Coronation Oaths, do for the future bind not only those Princes that granted them, but also their Successors, to their observation: And I then look upon them bound, under pain of Damnation, not to break or infringe them, without very great necessity.

But however, if they shall happen so to do, since they were Matters of mere Grace and Favour at the first, and not of Right, the Princes that thus transgress them are only accountable to God, and punishable by him, and not by their Subjects, for any Breaches or Infringements of such Liberties and Immunities: And this may serve against the Fancies of all those, who think Princes have nothing but what the People have given them; and likewise against such as Mr. *Hobbs*, who maintain so much is conferred on them, that they have a Right to leave nobody else any thing to enjoy, that they have a mind to take from them. And this I take to be a much better Security for the Peoples Liberties, to leave it to the Honour and Conscience of their Princes, and that Fear they ought to have of the Divine Vengeance, in case they oppress their Subjects contrary to Law, than your heady and violent Methods of Resistance for the Oppression or Tyranny of Princes, which would but give the common People a Pretence of taking Arms, and rebelling against their Princes upon every slight Provocation.

F. You have made a very plausible Discourse, whether of your own, or from the Author you quote, is not much material; for, I doubt, when it comes to be examined, it will appear much more like a Romance than a true History: And therefore, granting at present your Principles to be true (tho' they are not) I desire you to shew me, how you can make it out, either from sacred or prophane History, that any *Limited Kingdom* now in the World ever had its *Original* from those gracious Condescensions, or Concessions of Princes, as you here mention: For by all that ever I can read or observe, either from our own or foreign History, all the Liberties and Privileges, which Subjects enjoy at this day, proceeded at first either from the original Contracts, Customs, or Constitutions of those Kingdoms or Nations, at the first Institution of their Government; or else were forced from Princes by their Subjects, who would no longer endure the Severity of their Yoke; or else were granted by some of them, who believing they had *more* Titles than their Competitors to the Crown, were willing to engage the People to their side, by granting them *greater Privileges* than they before enjoyed.

And tho' I grant, the Reflections you make upon the Exercise of arbitrary Power, and the Miseries it brings both upon the Prince and People, are very true; yet I am sure the Practice of most absolute Monarchs throughout the whole World hath run quite contrary to your Suppositions. For Princes are so far (by what I ever read or observed) from being willing to part with any of their Power, that they have still endeavoured by degrees to enlarge it, and render it *more absolute* than it was left them; as you may observe in the Government of *France*, *Spain*, *Denmark*, and *Sweden*, in this last Age; and what *Encroachments* were made in this Kingdom, by the Prerogative, upon the Peoples Liberties, during the Reigns of our last Princes, he is a Stranger to the History of the Country, that hath not read of, if he do not remember them; and how much higher they would have been carried, if this strange and sudden Revolution had not put a stop to it, I had rather you and I should understand in Idea than by Experience.

But if such grave Reflections as these of yours were able to work upon the first Monarchs, I desire to know the reason why those of *Turkey*, *Persia*, *Russia*, and the *African* Emperors of *Morocco*, and of the *Abissines* (who sure have been as wise as any you can name) should not, in so many Ages as they have governed, see these Inconveniences you mention, and restrain their exorbitant Power within some moderate Limits: Nay, to the contrary, one of the most ambitious and aspiring

aspiring Monarchs in *Europe* is making what haste he can to reduce his Kingdom into the same Model. And what, do you think, would the Princes and Counsellors of these Empires say to such a one as you or I, who should offer to preach this strange Doctrine to them, that they ought under pain of Damnation to use their Subjects as their Children, and not as Slaves or meer Vassals? I doubt they would make us pay dear for publishing such false Doctrine in their Dominions, or at least would despise us for half-witted Fellows, without any true Notions in Politicks; since they believe, that the true Security and Glory of a King consist in vast Standing Armies, great Fleets, and a Power to take from their Subjects and Neighbours whatever they please, thereby to enjoy their own Pleasures and Humours in all their Hearts can desire, and to extend their Empires (*per fas & nefas*) as far as ever their conquering Swords will give them leave. And if you should tell them, that their Subjects could not love them, nor live happily nor contentedly under such a Government; I suppose their Answer would be (if they could speak *Latin*) *Oderint dum metuant*; or, in the Language of their own Country, that they would rather trust a Standing Army than the Affections of their People; and that it is better to take from their Subjects what they have a mind to, than to leave it to their Good-will what they will give them. These are all the antient and modern Politicks that I can observe in most absolute Monarchies, or in those Kingdoms where Kings have taken upon them so to govern their Subjects at this day: But I defy you to shew me any one Kingdom in the World, where the People owe all their Liberties and Privileges meerly to the Good-will and Favour of their Princes, who granted them only out of those wise Considerations you have now mentioned.

But as for the Expedient at the latter end of your Speech, that these Privileges and Condescensions, when once granted by Kings to their Subjects, and pass'd into constant and standing Laws, and also solemnly sworn to by Princes at their Coronation, do not only bind those Princes that granted them, but also their Successors, under pain of Damnation; I so far agree with you, tho' I must beg your Pardon, if I cannot think this a sufficient Security, for several Reasons I can give you at a more convenient Time, when I shall, when you please, more fully discuss this Point.

M. I must freely tell you, Sir, I am not yet satisfied neither with the Instances you have brought, nor yet with your Replies to my Answers; and I think I can shew you, as to this Kingdom, that they are false in Matter of Fact. For if that the first and most antient Kingdoms and Monarchies began by *Conquest* at first, and that perhaps for the most part by Wars unjustly made, as I may also instance in *England*, if this were a proper Season for it; so that indeed the greatest Liberty in the World (if it be duly considered) is for a People to live under a *Paternal Monarchy*. It is the *Magna Charta* of this Kingdom, all other Shews or Pretexes of Liberty are but several Degrees of Slavery, and a Liberty only to destroy Liberty.

B. P. P.

So that I think I may very well keep my first Opinion, that *Paternal Government* is the *Foundation* of all other; and I have ever thought God's Love and Kindness to Mankind did never appear in any thing more (except in Man's Redemption) than in creating only one Man, and out of him only one Woman: So that *Adam* was a kind of a Father to his Wife, that Marital, as well as all other Power, might be founded in *Paternal Jurisdiction*; that all Princes might look upon the meanest of their Subjects as their Children, and all Subjects upon their Prince as their common Father, and upon each other as the Children of one Man; that Mankind might not only be united in one common Nature, but also be of one Blood, of one Family, and be habituated to the best of Governments from the very Infancy of the World.

Were this well considered, as there could be no *Tyrants*, so neither would there be any Traitors and Rebels; but both Prince and People would strive to outdo each other in the Offices of Love and Duty. And now do you or any Man living read Sir R. F.'s *Patriarcha*, or other Works, and see if either he or I have ascribed one Dram of Power to Princes, which will not naturally spring from this *Supreme Paternal Power*.

So that upon the whole, I think Reason it self would conclude, that this way of solving the *first Rise* of Government is true, and that it is the Duty of all, who by the Blessing of God are under *Paternal Monarchies*, to be very thankful for the Favour, and to do the utmost that in them lies to preserve and transmit that best

Form

Form of Government to their Children after them. And surely there is no Nation under Heaven hath more Reason for this than the *English*, who are under a *Paternal Monarchy*, which has taken the best care that can be to secure them, not only from Oppression and Wrong, but from the very Fear of it.

F. Since you lay the chief stress of your Assertion upon the Original of most of the Kingdoms and Monarchies now in the World, and of our own in particular, I think I may safely join issue with you on both points, and in the first place affirm, that an *unjust Conquest* gives the Conqueror no Right to the Subjects Obedience, much less over their Lives or Estates; and if our *Norman William* and his Successors had no more Right to the Crown of *England* than meer Conquest, I doubt whether they might have been driven out after the same manner they came in: But I believe you will find, upon second thoughts, that unjust Conquests and Usurpations of Crowns be no firm Titles for Princes to rely on; lest the old *English* Proverb be turned upon you, *viz. That which is Sauce for a Goose is Sauce for a Gander*. But I shall defer this Discourse concerning Titles by Conquest, and in particular that of our Kings to this Kingdom, to some other time; when I doubt not but to shew, that it is not only false in Matter of Fact, but also that it will not prove that for which it is brought.

And therefore what you say in your Conclusion, in exaltation of God's Love and Kindness to Mankind, in creating one Man, and out of him only one Woman, that *Adam* might be a kind of Father to his Wife, is a very pretty and indeed singular Notion; and you would do very well to move the *Convocation*, next time it sits, that this Explanation may be added to the *fifth Commandment*, that Women may be taught in the Catechism, that Obedience to Husbands is due by the Precept of *Honour thy Father and thy Mother*.

And therefore I need give no other Answer to all the rest you have said: For however specious the *Hypothesis* may seem (as you have dress'd it up) for Princes and People; yet till you have proved, that all *Paternal Power* is Monarchical, and that all *Monarchical Power* is derived from Fatherhood, it signifies nothing.

Nor can these *pia Fraudes* do any more good in Politicks than Religion: For as Superstition can never serve to advance the true Worship of God, but by creating false Notions of the *Divine Nature* in Mens Minds, which doth not render it, as it ought to be, the Object of their Love and Reverence, but servile Fear; so I suppose this asserting of such an unlimited *despotic Power* in all Monarchs, and such an entire Subjection as *Sir R.F.* and you your self exact from Subjects, can produce nothing but a slavish Dread, without that Esteem and Affection for their Prince's Person and Government, which is so necessary for the Quiet of Princes, and which they may always have, whilst they think themselves obliged in Conscience and Honour to protect their Lives and Fortunes from Slavery and Oppression, according to the just and known Laws of the Kingdom, and not to dispense with them in great and essential Points, without the Consent of those who have a hand in the making of them: And all false Notions of this *Supreme Power*, as derived from I know not what *Fatherly* (but indeed *Despotic*) Power, are so far from settling in Peoples Minds a sober and rational Obedience to Government, that they rather make them desperate, and careless who is their Master; since, let what Change will come, they can expect no better than to be Slaves.

Nor are Subjects put in a better condition by this Doctrine of *absolute Non-resistance*, since all Princes are not of so generous a nature, as not to tyrannize and insult the more over those, whom they suppose will not, or else dare not resist them; and therefore I cannot see how such a Submission can soften the Hearts of the most cruel Princes in the World, as you suppose; much less how a Power to resist in some cases can enrage the mildest Princes to their Peoples Ruin; since all Resistance of such mild and merciful Princes I grant to be utterly unlawful: Nor do I hold Resistance ever to be practised, but where the People are already ruined in their Liberties and Fortunes, or are just at the brink of it, and have no other Means left but that to avoid it.

To conclude, I so far agree with you, that I think it is the Duty of all that are born under a Kingly Government *limited by Laws*, to be very thankful to God for the Favour, and to do the utmost that in them lies to preserve and transmit this best Form of Government to their Children after them, without maintaining such unintelligible Fictions as a *Paternal Monarchy* derived from *Adam* or *Noah*. And tho' I own that some of our former Kings have taken the best care they could

to secure this Nation from *Popery* and *Arbitrary Power*; yet whether the Method of our three last Kings has been the readiest way to secure us from the Fears of it, I leave it to your own Conscience (if you are a Protestant) to judge.

But since you defy me to shew you out of Sir R. F.'s *Patriarcha*, that he hath ascribed one Dram of Power to Princes, which doth not naturally arise from a *Supreme Paternal Power*, and that this is no exorbitant Height; I think I am able to prove from many Passages in his *Patriarcha*, as well as other Works, that no Author hath made bolder Assertions to render all Mankind *Slaves*, instead of Subjects; and all Princes *Tyrants*, instead of Kings; and that his Principles are so far from being safe, that if they are duly look'd into and weighed, they will prove destructive as well to the Rights of Princes, as to the Liberties of the People.

M. I should be very glad to see that proved; for I must always believe, 'till you shew me to the contrary, that this excellent Author lays it down for a Ground, that Princes, being as Fathers to their People, are bound to treat their Subjects as Children, and not as Slaves: And therefore waving this last Controversy, which we have argued as far as it will go; pray make out what you say from his own Words, and I will give up the Cause.

Page 4.

F. I wonder how you can be so partially blind as not to see this, since you yourself have already made use not only of a great deal of his Doctrines, but also of his very Words. And therefore, pray see his Obedience to Government in doubtful Times; as also in his Preface to the Observations upon *Aristotle's* Politicks; where you will find he asserts, *That Adam was the Father, King and Lord over his Family; a Son, a Subject, and a Servant, or a Slave, were one and the same thing at first: The Father had power to dispose of, or sell his Children, or Servants.* "Whence we find, that at the first reckoning of Goods in Scripture, the Man-servant, and the Maid-servant are number'd among the Possessions, and Substance of the Owner, as other Goods were." So that then, if the Power of a Father, and of a Monarch be all one, and that all *Monarchical Power* is *Despotical*, the Consequence is also as evident, that all Subjects are also naturally Slaves, unless their Princes shall please to lay an easier Yoke upon them.

M. Perhaps Sir R. F. may have carried this Matter a little too far; yet if you please to look into his *Patriarcha*, Chap. 3. Part 1. you will find that he hath this Passage, which plainly speaks the contrary: *The Father of a Family governs by no other Law, than by his own Will, not by the Laws and Wills of his Sons and Servants. There is no Nation that allows Children any Action, or Remedy, for being unjustly governed; and yet for all this, every Father is bound by the Law of Nature to do his best for the preservation of his Family; but much more is a King always tied by the same Law of Nature to keep this general Ground, That the Safety of his Kingdom be his chief Law.* Whence you may observe, that though he takes away all Remedy from Children against their Parents for being ill governed, yet doth he not set the Father free from all Obligation to preserve the Good of his Family, of which sure a Man's Children are a principal part.

And if you please to look back to the second Chapter of his *Patriarcha*, you will find these Words: *To answer in particular to the first Text, it may be said the Sense of these Words, By the Law of Nature all Men are born free, must needs mean a Freedom only that is opposite to such a Subjection as is between Father and Son. This is made manifest by the Text of the Law: For Ulpian in this place speaketh only of Manumission, which is a setting at Liberty of Servants from Servitude, and not of Emancipation, which is the freeing of Children from the Fathers Tuition. Servitude, as the Law teacheth, is a Constitution of the Law of Nations, by which a Man is subject to the Dominion of any other Man against Nature. So not every Subjection is Servitude, but Subjection contrary to the Law of Nature. Yet every Man is born subject to the Power of a Father. This the Law itself saith, In Potestate nostra Liberi nostri sunt. So that you see here he maketh a difference between Servitude, and that Subjection that is due to Fathers.*

F. Give me leave to answer these two Instances before you proceed any farther; and I shall in the first place make bold to answer your last Instance first, because I shall be much shorter upon it. But pray take notice by the way, that this Author is very high and rigorous for the *absolute Power* of Life and Death in all Fathers over their Children in the State of Nature, and that they may exercise it for very slight Offences; And therefore in this Chapter you have last quoted, he seems very well satisfied with the Example of *Cassius*, who threw his

Son

Son out of the Confession for publishing the Agrarian Law, for the Division of Lands; and I think this was no such great Crime, for which a Father might justify the putting his Son to Death. And in the Section before this, he justifieth the Power of Fathers amongst the Romans, as being ratified and amplified by the Laws of the twelve Tables, enabling Parents to sell their Children two or three times over. So that these things considered, I cannot see how this Distinction of Sir R. F. out of the Civil Law will do him any service. For though I grant indeed, that *Manumission*, and *Emancipation*, are two different Words, yet do they both signify the same thing. And though for the greater respect which they would shew to the Condition of Children above that of Slaves, they were pleased to make use of different Expressions; yet whoever will look more closely into the Nature of the Subjection that Children were in, under their Parents, by the Roman Law, will find, that the Condition of Children was no better than that of Slaves. For *First*, The Father had such an *absolute Power* over the Person of the Son, that he could sell him three times, whereas he could sell a Slave but once. *Secondly*, He had such an *absolute Power* over his Life, that he could take it away whenever he pleased. *Lastly*, A Son could have no Property in any Goods without his *Father's Consent*, 'till he was emancipated, or made free: So that if his Father were harsh and ill-natured, the Condition of a Son was worse than that of a Slave, as long as his Father lived.

And therefore, I am still of the Opinion of the antient Civil Lawyers, who assert the natural Freedom of Mankind, according to the Maxim you have now cited. And they acknowledge, that the *Servitude*, or *absolute Subjection* of Children to their Fathers, was not by the Law of Nature, but by the Civil or Roman Law, peculiar to themselves, as I have already proved at our last Meeting.

But to come to your first Quotation, whereby you would clear Sir R. F. from maintaining any unjust Severity in Fathers, or Tyranny in Princes, because they are both to endeavour the common Good of their Families and Kingdoms. 'Tis very true he says so; but of this *Common Good* they themselves are the *sole Judges*. So that if the Father please to sell one or two of his Children, whom he least loveth, to provide Portions for the rest, he may lawfully do it for any thing I see to the contrary. So likewise immediately after he asserts the Superiority of all Princes above Laws, because there were Kings long before there were any Laws. And all the next Paragraph is wholly spent in proving the *unlimited Jurisdiction of Kings above Laws*; as it is described by Samuel, when the Israelites desired a King: So that it signifies little what Laws Princes make, or what Privileges they grant their Subjects, since they may alter them, or abrogate them whenever they please.

M. But pray take along with you what he says in the next Paragraph you quote; where you may see these Words; *It is there evidently shewed, that the Scope of Samuel was to teach the People a dutiful Obedience to their King, even in those things which themselves did esteem mischief and inconvenient: For by telling them what a King would do, he indeed instructs them what a Subject must suffer; yet not so, as that it is right for Kings to do injury, but it is right for them to go unpunished by the People if they do it. So that in this point it is all one, whether Samuel describe a King or a Tyrant; for patient Obedience is due to both: No Remedy in the Text against Tyrants, but in crying and praying unto God in that Day.* And that Sir R. F. is very far from justifying Kings in the unnecessary Breach of their Laws, may farther appear by what he says, cap. 3. part 6. of this Treatise; where pray see this Passage. *Now albeit Kings who make the Laws, be (as King James teacheth us) above the Laws, yet will they rule their Subjects by the Laws; and a King governing in a settled Kingdom, leaves to be a King, and degenerateth into a Tyrant, so soon as he leaves to rule according to his Laws; yet where he sees the Laws rigorous, or doubtful, he may mitigate and interpret them.* So that you see here he leaves the King no Power or Prerogative above the Laws, but what shall be directed, and employed for the general Good of the Kingdom.

F. But pray, Sir, read on a little farther, and see if he doth not again undo all that he hath before so speciously laid down; and if you will not read it, I will: *General Laws made in Parliament, may, upon known respects to the King, by his Authority, be mitigated, or suspended upon Causes only known to him. And although a King do frame all his Actions to be according to the Laws, yet he is not bound thereto, but at his good Will, and for good Example: So far forth as the General Law of the Safety of the*

the Commonwealth doth naturally bind him ; for in such sort only, positive Laws may be said to bind the King, not by being positive, but as they are naturally the best, or only means for the preservation of the Commonwealth.

So that if the King have this Prerogative of mitigating, interpreting, and suspending all Laws, in Cases only known to himself, and that he is not bound to the Laws but at his own good Will, and for good Example. I desire to know what greater Prerogative a King can desire, than to *suspend* the Execution of any Law, as often as he shall think fit. For though I grant the *Suspension* of a Law differs from the *Abrogation* of it, because the former only takes away the force of it in this or that particular case, whereas the latter wholly annuls the Law ; yet if this Suspension be general, and in every case, where the Law is to take effect, it amounts to the same thing with an *Abrogation* of it ; as may be plainly seen in the late King's *Dispensing Power*. For though it be true he pretended to no more, than to dispense with this, or that Person, who should undertake a publick Employment, either *Military* or *Civil*, without taking the *Oaths* and *Test* ; yet since he granted this Dispensation generally to all Papists, and others that would transgress this Law, it amounted to the same thing, during his Pleasure, as an *absolute Abrogation* of it. And therefore I do very much wonder why divers, who are very zealous for the *Church of England*, and the King's Prerogative, should be so angry with him for erecting that Power, which not only this Author, but all others of his Principles have placed in him : And if the King may suspend this, and all other Laws, upon Causes only known to him, I do not see how he differs from being as absolute and arbitrary a Monarch, as the *Great Turk* himself ; and may, when he pleases, notwithstanding all Laws to the contrary, take away Mens Lives without any due Forms of Law, and raise Taxes without Consent of Parliament.

M. But pray read on a little farther, and you will find that he very much restrains this *absolute Power*, in these Words : *By this means are all Kings, even Tyrants and Conquerors, bound to preserve the Laws, Goods, Liberties and Lives of all their Subjects, not by any Municipal Law of the Land, but by the Natural Law of a Father, which binds them to ratifie the Acts of their Forefathers and Predecessors in things necessary for the publick Good of their Subjects.*

F. Were I a Monarch limited by Laws, I would desire no greater a Power over them than this you have here brought out of this Author. For he says, *positive Laws do not bind the King, but as they are the best or only means for the preservation of the Commonwealth.* In the next place you see that all Kings are bound to preserve the Lives and Estates of their Subjects, not by any *Municipal Law* of the Land, but by the *Natural Law* of a Father, which binds them to ratifie the Acts of their Predecessors in things necessary for the publick Good of their Subjects. Now this *Paternal Power* is large enough of all Conscience to discharge Princes from any Obligation to the Laws farther than they please. For it before appears, that the Father of a Family governs by no other Law than by his own Will, and not by the Laws and Wills of his Sons or Servants ; therefore if the Power of the King be wholly *Paternal*, he may alter this Will of his as often as he pleases : Nor can his Subjects, who are all one with Sons and Servants, have any reason to find fault with it. For he says, *There is no Nation that allows Children any Remedy for being unjustly governed.* And though it be true, that he restrains this Prerogative both in Fathers and Kings to the publick Good of their Children and Subjects ; yet as long as he is left the sole and uncontrollable Judge of what is for the publick Good, all these fine Pretences will signifie nothing. For he is bound to observe or ratifie no Laws or Acts of his Predecessors, but what *he is satisfied* tend to this End : So that if he thinks fit to judge, that *Magna Charta*, for Example, or the Statute *de Tallagio non concedendo*, or any Liberty we enjoy, are not necessary, or contrary to the common Good, he is not tied to observe them. And upon this Principle it was that the Judges in the Reign of King *Charles the First* founded the King's Prerogative for *Ship-money* : For they supposed that the King, in case of necessity, (that is, for the publick Good of the Subjects) might lay a Tax upon the Kingdom, though without Consent of Parliament. So that upon this Pretence the King being the sole Judge of the Necessity, he might quickly have raised what Taxes, and as often as he had pleased.

But, lest our Kings should think themselves too strictly bound by their *Coronation Oaths*, to observe the Laws, pray see in the next Paragraph how this Author endeavours

endeavours to help the King to creep out of that Obligation too. Therefore pray read on. Others there be that affirm, that although Laws of themselves do not bind Kings, yet the Oaths of Kings, at their Coronations, tie them to keep all the Laws of their Kingdoms. How far this is true, let us but examine the Oaths of the Kings of England at their Coronation: The Words whereof are these: "Art thou pleased to call to be admitted in all thy Judgments indifferent and upright Justice, and to use Discretion with Mercy? Art thou pleased that our upright Laws and Customs be observed; and dost thou promise, that these shall be protected and maintained by thee?" These two are the Articles of the King's Oath, which concern the Law, or Subjects in general; to which the King answers affirmatively; being first demanded by the Archbishop of Canterbury: "Pleaseth it you to confirm, and observe the Laws and Customs of ancient Times granted from God, by just and devout Kings unto the English Nation, by Oath unto the said People, especially the Law, Liberties and Customs granted unto the Clergy, and Laity, by the famous King Edward?" We may observe in these Words of the Articles of the Oath, that the King is required to observe not all the Laws, but only the upright, and that with Discretion and Mercy. The Word upright cannot mean all Laws, because in the Oath of Richard the Second, I find evil and unjust Laws mentioned, which the King swears to abolish: And in the old Abridgment of Statutes set forth in King Henry the Eighth's Days, the King is to swear wholly to put out evil Laws, which he cannot do, if he be bound to all Laws.

Now what Laws are Upright, and what Evil, who shall judge but the King? Since he swears to administer upright Justice with Discretion and Mercy; or (as Beaton hath it) *agminem præcipiat, & misericordiam*. So that in effect the King doth swear to keep no Laws but such as in his Judgment are upright, and those not literally always, but according to the Equity of his Conscience, joined with Mercy, which is properly the Office of a Chancellor rather than of a Judge. And if a King did strictly swear to observe all the Laws, he could not, without Perjury, give his Consent to the Repealing or Abrogating of any Statute by Act of Parliament, which would be very mischievous to the State.

But let it be supposed for Truth, that Kings do swear to observe all the Laws of their Kingdoms; yet no Man can think it reason, that Kings should be more bound by their voluntary Oaths, than common Persons are by theirs. Now if a private Person make a Contract either with Oath, or without Oath, he is no further bound than the Equity and Justice of the Contract tie him; for a Man may have Relief against an unreasonable and unjust Promise, if either Deceit or Error, Force or Fear induced him thereunto; or if it be hurtful or grievous in the performance. Since the Laws in many Cases give the King a Prerogative above common Persons, I see no reason why he should be denied the Privilege which the meanest of his Subjects doth enjoy.

I need not make any long Paraphrase upon these Words: It is sufficient that the King is here left sole Judge of what Laws are upright, and what unjust; and consequently what Laws he pleases shall be observed, and what not. So that no Laws, though thought never so just, and necessary by the Parliament at the time of making of them, shall signify any thing, if he thinks fit afterwards to judge otherwise. And lest this should not be sufficient, he hath found out another way whereby Princes may absolve themselves of this troublesome Obligation of Oaths; and therefore he would have them no more bound up than common Persons, who, because they may have Relief in publick Courts of Justice, against an unjust Promise; if either Error, Deceit, Force, or Fear, induced them thereunto; nay more, if it be hurtful or grievous in the performance; Kings who have a Prerogative above common Persons, and who acknowledge no Tribunal above themselves, may absolve themselves of their Oaths whenever they think good; by saying it was extorted from them by Deceit, Force, or Fear: Or if they cannot satisfy themselves without it, they might have had formerly the Popes's Dispensation for Money, which we read King John, and Henry the Third obtained to be absolved of the Oaths they had taken to observe *Magna Charta*. But this Author hath found out a shorter cut, and hath made Kings both Judges and Parties, and to absolve themselves by a Fundamental Right of Government. And what hath proved the Conclusion of such Princes who have taken this Author's Liberty of breaking their Coronation Oath at their pleasure? It hath only taught their Subjects to imitate their Example, and to make as light of their Oath of Allegiance.

M. I will not deny, but perhaps Sir R. F. may have carried the Prerogative in this Point a little too far ; yet that he meant honestly towards the Commonweal in all this, I pray see the 8th Section of this Chapter, where you'll find these Words ; *Many will be ready to say, it is a slavish and dangerous Condition to be subject to the Will of any one Man, who is not subject to the Laws : But such Men consider not, 1. That the Prerogative of a King is to be above all Laws, for the good only of them who are under the Laws, and to defend the People's Liberties, as his Majesty graciously affirmed in his Speech, after his last Answer to the Petition of Right ; howsoever, some are afraid of the Name of Prerogative ; yet they may assure themselves, the Case of Subjects would be desperately miserable without it.* So that you see here he asserts no Prerogative in the King to be above all Laws, but only for the good of the People, and to defend their Liberties ; which I think is a sufficient restraint of Prerogative.

F. But read a little lower, and the People will have no such great cause to thank him, as you may see by these Words : *In all Aristocracies the Nobles are above the Laws ; and in all Democracies, the People. By the like reason, in a Monarchy the King must of necessity be above the Laws ; there can be no Sovereign Majesty in him that is under them ; that which gives the very Being to a King, is the Power to give Laws ; without this Power he is but an Equivocal King.*

And most part of what follows in this Treatise, is only to prove, that the Parliament, or Assembly of Estates, was a Creature wholly of the King's Creation, and consequently, that he alone makes the Laws in it : And he hath also written a whole Treatise, called *The Freeholders Grand Inquest*, to prove that it is the King's Authority alone that makes the Laws ; and therefore that he can interpret and dispense with them at his pleasure. So that Richard II, had this Author liv'd in his time, might have made him a Judge as well as Tresilian and Belknap, since they all maintain'd the same Principles. But, lest we should mistake him, see what he says at the Conclusion of this Treatise : *For the confirmation of this Point, Aristotle saith, That a perfect Kingdom is that wherein the King rules all things according to his own Will ; for he that is called a King according to the Law, makes no kind of Kingdom at all. This, it seems, also the Romans well understood to be most necessary in a Monarchy ; for tho' they were a People most greedy of Liberty, yet the Senate did free Augustus from all necessity of Laws, that he might be free of his own Authority, and of absolute Power over himself, and over the Laws, to do what he pleased, and leave undone what he list ; and this Decree was made while Augustus was yet absent.* Accordingly, we find that Ulpian, the great Lawyer, delivers it for a Rule of the Civil Law, *Princeps Legibus solutus est*, The Prince is not bound by the Laws.

So that upon these Principles, all Kings are not only discharged from the Penalty, but also the very Obligation of observing Laws, farther than they shall think fit. And indeed, this Author carries this Prerogative beyond what the most moderate Roman Emperors ever pretended to, as I can easily show you from your own Civil Law Books ; and therefore pray reach me down your Volume of the Code, and see here what the Emperor declares on this Matter *De Testamentis. Ex imperfecto Testamento nec Imperatorem hereditatem vindicare posse, saepe constitutum est, licet enim Lex Imperii Solennibus juris Imperatorem solverit ; Nihil tamen tam proprium Imperii est, quam Legibus vivere.* See likewise in the Theodosian Code these words : *Digna vox est Majestate Regnantis, Legibus alligatum se Principis profiteri, adeo de Autoritate juris, nostra pendet Autoritas, & re vera majus Imperio est submittere Legibus Principatum, & oraculo presentis Edicti quod nobis licere non patimur, aliis indicamus, (viz. Successoribus Theodosio & Valentino.)*

So that you may here see, that even the Roman Emperors were more modest, than to declare themselves discharged by their Prerogative, or thought of any of these subtle distinctions of this Author, from their obligation to the Laws, however they were from the Penalty ; which is the true Sense of this Phrase of being *Legibus solutus*.

But God be thanked, most of our own Kings have been more conscientious, than to maintain that they were not bound by their Coronation Oath farther than they pleased. For you may see in the Preamble to the Statute of Provisors, made in the 25th of Edward III, where it is declared and acknowledged by the King himself, and both Houses of Parliament, that the Right of the Crown of England, and the Law of the Realm is such, that upon the Mischiefs and Damages which happen to the Realm, he ought, and was bound of his said People in his Parliament thereof, to make Remedy, and Law, in voiding the Mischiefs which come thereof : And the

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King

L. 3. lib. 6. t.
23.

C. de Legibus
l. 4. lib. 1. t.
14.

Rastal, f. 99.

King seeing the *Mischiefs* and *Damage* aforesaid, and having regard to the said Statute (*scil.* the former *Statute of Provisors*) he here farther acknowledges, *that he is bound by his Oath to do the same to be kept, as the Law of his Realm, tho' by sufferance and negligence it hath been hitherto attempted to the contrary.*

So likewise, King *Henry IV.* declares in full Parliament (as appears by the Par-
liament Roll) That whereas the Commons in Parliament had granted, that the
King should be in as great Liberty as any of his Noble Progenitors; on which our
said Lord of his Royal Grace, and tender Conscience, had granted in full Parlia-
ment, that it is not his intent, nor will he alter the Laws, Statutes and good
Usages, nor take any Advantages by the said Grant; but will keep the ancient
Laws and Statutes ordained and used in the times of his Noble Progenitors, and do
Right to all People in Mercy and Truth *Selonc son Serment*, i. e. according to his
Coronation Oath.

*Rot. Parl. H.
IV. n. 108.
Act pour gar-
der, les loys.*

M. I will not affirm, but *Sir R. F.* observing how much the King's Prerogative was run down by the long Parliament; and how the least slips and miscarriages in Government were aggravated by the Demagogues that then domineered, as open and violent breaches of his Coronation Oath, might be willing to make the best defence he could for such Miscarriages; and this Treatise of *Patriarcha*, being a Posthumous piece, perhaps he would have altered many things in it, had he lived to publish it himself; but I doubt not, but he was a very honest Man, and meant well to the Kingdom for all that. And therefore I hope you will not be too rigorous in your Censure of him.

F. I'll assure you, Sir, I shall not, because he hath been dead many Years, and therefore I had much rather censure his Writings, than his Person, which I never knew. But, if I may judge from his Works, he was certainly no Friend to Parliaments, or the Power of the Laws above the Prerogative: But that I may also shew you how dangerous and derogatory his Opinions likewise are to the Titles of all Sovereign Princes and Monarchs now in the World, however he may seem to write in their defence, pray turn to his *Patr. chap. 1. par. 9.* and to a Question, *What becomes of the Right of Fatherhood, in case the Crown escheat for want of an Heir*; he thus replies, which pray read, It is but the Negligence or Ignorance of the People to lose the knowledge of the true Heir: For an Heir there always is; if Adam himself were still living, and now ready to die, it is certain, there is one Man, and but one in the World, who is next Heir, although the knowledge who should be that one Man be quite lost. The which he likewise repeats to the same effect, in his Treatise of the Anarchy of a limited or mixed Monarchy. Pray see the place, and read these Words: *It is a truth undeniable, that there cannot be a Multi-
tude of Men whatsoever, either great or small, though gathered together from the several
Corners, and remotest Regions in the World; but that in the same Multitude considered by
itself, there is one Man amongst them, that in Nature hath a Right to be the King
of all the rest, as being the next Heir to Adam, and the other Subject unto him; every
Man by Nature is a King, or a Subject.* So that I think no Kings in the World being able to deduce their Pedigree from Adam (of whom there can be but one right Heir) they all (or at least all but one) are only Kings *de Facto*, and not *de Jure*, and Usurpers upon this Heir of Adam. So that if God would but be pleased to reveal who this next Heir is, all the Kings of the Earth were bound in Conscience to lay their Crowns at his Feet; though he were but a Cöbler or a Link-boy. How ridiculous a Notion this is, I leave it to any indifferent Man to judge.

*Miscel. p.
273.*

M. I hope this Opinion is like to have no very ill effect, unless any Prince, by virtue of this Title of Adam's right Heir, should pretend a Right to an universal Monarchy; and then I think it were but reasonable, he should be put to make out his Title; but seeing no body doth so, to the best of my knowledge, it is but reasonable that all Princes should in the mean time enjoy what they are in lawful Possession of, till this Heir of Adam hath made out his Title, and then they may consider farther of it.

F. And it is very well, that this right Heir is not to be found; for if he were, all Princes would be Usurpers, who did not immediately resign to him. But this Doctrine is of more fatal consequence than you imagine; for it doth not only concern Princes in respect of Adam's right Heir only, but also of any other right Heirs to Princes, who have lost their Right to a Crown never so many Ages ago: For look into his Directions for Obedience in doubtful times, and read this Passage: *By Humane positive Laws, a Possession time out of mind takes away, or bars a former Right, to*
avoid

avoid a general Mischief of bringing all Right into a Disputation not decideable by Proof, and consequently, to the overthrow of all Civil Government, in Grants, Gifts, and Contracts between Man and Man; but in Grants and Gifts, that have their Original from God or Nature, (as the Power of a Father hath) no inferior Power of Man can limit, nor make any Law of Prescription against them. Upon this ground is built that *Nullum tempus occurrit Regi*, no time bars a King. And a little before, he gives us this reason of it: For tho' by humane Laws a long Prescription may take away Right; yet a divine Right never dies, nor can be lost or taken away. By which Principle, he renders the Titles of most (if not all) of the Princes of Europe at this day very weak and disputable, whenever any other Person shall set up a Title against them.

pag. 273.

M. But Sir R. F. hath found a very good Expedient for this; for he tells us, in the last cited Discourse, that the Paternal Power cannot be lost, tho' it may either be transferred or usurped; and in his Anarchy of a limited Monarchy, he thus more at large expresses it. Many times, by the Act either of a Usurper himself, or of those that set him up, the true Heir of a Crown is dispossessed, God using the Ministry of the wickedest Man for the removing and setting up of Kings; in such cases, the Subjects Obedience to the Fatherly Power must go along, and wait upon God's Providence, who only hath right to give and take away Kingdoms, and thereby to adopt Subjects into the Obedience of another Fatherly Power. And lastly; in his Discourse of Obedience, &c. he more clearly settlcth this Point, in answer to an Objection there made; that most Kings now in the World, have no other Titles to their Crowns but Conquest or Usurpation: He replieth, That tho' all Kings were Usurpers, yet still the first Usurper hath the best Title, being in Possession by the Permission of God; and where an Usurper hath continued so long, that the knowledge of the right Heir is lost by the Subjects; in such case the Usurper in Possession is to be taken and reputed by such Subjects for the true Heir, and is to be obey'd by them as their Father. And I think you your self will not deny, but that Kingdoms may be transferred from one Prince to another by Conquest, or a long Usurpation; and that when there is no other better Title extant, the King in Possession, or his Heirs, may have a good Title by a long Possession, tho' it began by Usurpation at first.

F. I have not now time to answer all that your Author hath as falsely, as incoherently said concerning this Subject of Usurpation; and I should be glad to hear you, or any Man else that will undertake to defend him, make him him content, not only with reason, but with himself, in this Discourse you quote, concerning Obedience to Government in doubtful times. For to pass by his unintelligible Notion, of supposing two supreme Paternal Powers subsisting at once, and each of them laying claim to the Obedience and Submission of the Subjects, the former that of the Usurper, *Who being in Possession of the Crown by the permissive Will of God, who hath thought fit to adopt the Subjects into a Fatherly Power*; and the latter, that Paternal Right which he supposes still to remain in the expelled Prince, and his Heirs for ever. By which means the Allegiance of the Subjects is so divided and perplex'd, that they can never be able to tell, when the Allegiance to the right Heir is to take place before that of the Usurper.

Ibid p. 68.

M. But if you had been pleas'd better to observe this Discourse, you would find that Sir R. F. hath very well obviated this Objection, as appears by these Words. *The Right of Fatherly Government was ordained by God for the preservation of Mankind; if it be usurped, the Usurper may be so far obeyed, as may tend to the preservation of the Subjects, who may thereby be enabled to perform their Duty to the true and right Sovereign, when time shall serve; in such cases to obey an Usurper, is properly to obey the first and right Governor, who must be presumed to desire the safety of his Subjects. The Command of an Usurper is not to be obeyed in any thing tending to the Destruction of the Governor, whose being in the first place is to be looked after.*

F. This is, I confess, a very pretty Distinction, to make the Usurper, who governs whether the right Heir will or no, yet to do it by his Consent, and that the Subjects, when they act thus, do but still obey their rightful Governor, which Supposition would be contradictory to what your Author hath already laid down of the Subjects being adopted into the Obedience of another Fatherly Power by the Usurpation; for if it be as he now makes it, they still remain under the Paternal Power of the former Prince, and the Usurper governs only as his Deputy; which is a very choice refined Notion, by which all Men had been obliged in Conscience to yield as full Obedience to Cromwell and the Rump, in all things that did not tend to the

the Destruction of the late King's Person, as to him himself; which I suppose you high Royalists will by no means admit of.

But this is not the main Matter that I have to except against; for if the Principles I have read out of that Treatise be true, *That the Right of a lawful Monarch and his right Heir, is a divine Right; and that no length of time or prescription can bar it; because a divine Right never dies, can be lost, or taken away, till the knowledge of the right Heir be lost by all the Subjects; and till which time Usurpers and their Heirs can never acquire an absolute and indefeasible Right in the Kingdoms they possess; it will certainly follow that the Title that most Princes of Christendom have to their Crowns, will be hereby rendered disputable and uncertain: For since this Author acknowledges, that the Titles of most Kings at this Day begun by unjust Conquests or Usurpations at first; the right Heirs of many of which expelled or deposed Princes are still, or were lately in being; they might upon this pretence make War upon the Prince in Possession and his Heirs, to the World's end: And tho' I grant, he says, that an Usurper is to be fully obeyed, when the knowledge of the right Heir is lost by all the Subjects, it is extremely uncertain and doubtful what he means by it; for if he means a personal Knowledge, few ordinary Subjects, but those that have personally known all the Royal Family, can thus know who was the right Heir; and so consequently, as soon as ever his Father or Ancestor that held the Throne is turned out, or dead, few private Subjects can have any personal Knowledge of this Heir. But if he means a Moral or Traditional Knowledge, such as is conveyed down to Posterity by History, Authentick Records, or Genealogies; I know not how such a Knowledge can ever be said to be lost, as long as such Histories or Memorials remain in being: And that this is so, is apparent, many Princes in Europe having upon this ground better Right to the Crowns of some Neighbouring Kingdoms, than those that wear them: And we know that by virtue of such an old Title from *Charles the Great*, the King of France looks upon himself to have a good Title to *Alsatia*, *Flanders*, and all the Low Countries, and as much of *Germany* as he can get: So that I will leave it to your self to judge, whether these Principles do not only render the Titles of most Princes doubtful and uncertain, but the Subjects Allegiance too.*

M. I cannot deny, but Sir R. F. may have carried this Point of Obedience and Submission to Usurpers, and of a concurrent Right in the lawful Monarch and his Heirs, a little too far. For I think it were much better to suppose with *Grotius* and other Writers, that after the third Generation, or Succession of the Crown in the Family of the Usurper, they may have a good and perfect Title to their Crowns, against the right Heirs of the lawful Monarch; (and this I take to be highly reasonable for the Peace and Welfare of Mankind) than that they should be always divided in their Allegiance between two opposite Princes; but till then, I suppose the Subjects are bound to assist, and stand for the lawful Heir and his Posterity, as far as is possible, without their own apparent Destruction.

F. I confess this Supposition is much more reasonable than the former; but I should be glad to know by what Law of God or Nature, the peaceable possession of a Crown, by an Usurper and his Heirs, just for three Generations or Successions, should give a Prince a better Title than three or four Years Possession; for God may have declared his Will as sufficiently in that time, as in three or four hundred: And if your Reason be good, that it is for the Peace and Safety of Mankind, that the Title of the right Heir should be lost and extinct after such a time; I cannot see why it should not be more for the good of Mankind, that their Allegiance should be settled and ascertained in a far less space, that is, as soon as the Conqueror or Usurper is quietly settled in the Throne, and hath received the Consent or Submission of all the Subjects. But I do not desire at present to enter any farther into this knotty Dispute about *Conquest* or *Usurpations*, but I rather desire to refer it to our next meeting.

M. Well, since you will have it so, I yield to it; but in the mean time I cannot but smile at your great partiality to the People, who upon your Principles, if they have but once given their Consent to the Usurper, he shall presently have as good a Title as the most rightful Monarch in the World: So that *Cromwell* having had this Consent of the People in his Mock-Parliament, had as good a Title as King *Charles II.* So that notwithstanding whatever you may pretend to the contrary, you are no such Enemy to Usurpers, as you would make your self: But however, you have

have no reason in the World (even by your own Principles) to except against this Author's Hypothesis of transferring the Subjects Allegiance by a Conquest or Usurpation.

F. I do not deny what you say, but then the Conquest must be in a just or lawful War; or else, if the *Great Turk*, or *French King*, should, without any Provocation given, make War upon, and conquer this Kingdom, and use the People with the highest Tyranny and Cruelty, they must be all bound in Conscience, not only to become, but continue absolute Subjects, nay Slaves to such a Conqueror, without any Resistance. But let the *Power of Usurpers* or *Conquerors* be what it will, I am sure it cannot be that of *Paternal Authority*, for the reasons already given: Nor can it be the *Usurpation* or *Acquisition* of the Power of a Master of a Family; for then the Subjects not being the Children of the Conqueror or Usurper, must be all Slaves instead of Subjects: So that I must again tell you, that it is from your want of distinguishing between *Paternal*, *Masterly*, and *Regal Authority*, which hath led you into all these Mistakes in this Matter; for the Relations of a Father, a Master and a King, are all really distinct and different, so that one of them is not the other, as any Man may easily perceive, that doth but hear the three Names pronounced to him, and consider their Signification: And therefore quitting this subject for the present, if you have any better Arguments to prove your *Divine Institution* of *Monarchy*, pray produce them, for it grows late.

M. I shall readily obey your Commands; but pray Sir, in the mean time remember that we assume this Question the next time we meet. But to come to the Matter in hand, I think there are yet some material Arguments behind, to prove *Monarchical Government* of *Divine Institution*: For in the first place, you may please to remember, that you your self have acknowledged that all *Civil Government* proceeds from God. Secondly, You have likewise admitted, that the *Government of Fathers*, or *Heads of Families*, was the *first and most ancient Government* of any in the World after the Fall; when some Government became necessary for the Punishment of Offences, and the restraining of the inordinate Appetites and Passions of Mankind. And lastly, That this Government having absolute Power of Life and Death, in some Cases, over the Wife, Children, and Servants of the Family; and that if this Power is conferr'd upon them by God (which you likewise granted) and doth not depend upon the consent or compact of the Wife, Children and Servants: If these things were so, I leave it to your self to consider from the Premises, whether this Power in Heads, or Fathers of Families (call them which you please) is not a *Monarchical Power*, or the Government of one Man, and that ordained by God; and that this was the only Government in the World, before the *Institutions of Commonwealths*, you your self cannot deny.

F. I shall shew you plainly, that you would impose a Fallacy, either upon your self or me in this Argument, and such a one which I have likewise already answered at our last meeting: For I then told you, that the Government of such Heads or Fathers of Families was only an *Oeconomical*, and not a *Civil Power*; and this I proved by divers Arguments against what you then argued to the contrary; and therefore I think I may yet safely affirm, that *Kingly* or *Monarchical Power* cannot be proved to be of *divine Institution* by this Argument; and I have a greater Man than Sir R. F. viz. the Judicious Mr. Hooker on my side, who makes a plain distinction between such a Head, or Master of a Family, and a King, as appears by these words in his *Ecclesiastical Policy*, which I desire you would read with me: *It is no improbable Opinion therefore, which the Arch-philosopher was of, That the chief Person in every Household was always, as it were, a King; so when numbers of Households joyned themselves in Civil Societies together, Kings were the first kind of Governors amongst them; which is also, as it seems, the reason why the Name of Fathers continued still in them, who of Fathers were made Rulers; as also the ancient Customs of Governors to do as Melchisedeck, as being Kings to exercise the Office of Priests (which Fathers did at the first) grew perhaps by the same occasion. Howbeit this is not the only kind of Regiment that hath been received in the World, the inconveniences of one kind have caused sundry others to be devised. So that in a word, all Civil Regiment, of what kind soever, seems evidently to have risen from the deliberate Advice, Consultation, and Composition, between Men judging it convenient and helpful, there being no impossibility in Nature consider'd by itself, but that Men might have lived without any Publick Regiment.* So that

that you may see, that tho' he places the Original of all Governments in the Heads or Fathers of Families (which Opinion I shall not oppose) yet it is plain that he makes a clear Distinction between *Oeconomical Government*, and that *Politick or Civil Power*, which arises from Compact between Men. So that this will not serve the purpose you bring it for. You may now proceed to what other Arguments and Instances you please; but pray do not make use any more of the Examples of the Patriarchs either before or after the Flood, since they are either altogether uncertain, or else as to those after the Flood, I have proved them to have been not Kings, but only Masters of separate Families. And you may likewise omit *Moses*, *Joshua*, and the Judges, as Instances of *Monarchical Power* by *Divine Institution*; since I have so lately proved their Authority not to have been at all Absolute or Regal.

M. I shall not any longer insist upon them, since you will not admit of those Instances, tho' I think there may be a great deal of weight in them: But thus much I suppose you cannot deny, as well from the Testimony of sacred as prophane History, that *Monarchy* is the first and most ancient Government in the World, as appears by those Remains we have left concerning the *Egyptian* and *Assyrian Monarchies*: And as for the Government of God's own People the *Jews*, he was pleased to be King over them himself, tho' to govern by his Viceroy, till such time as he was pleased to make *Saul* and *David* Kings over them. Now what can be a greater Argument than this for the *Divine Institution* of *Monarchical Government*?

F. I suppose you will not urge the Antiquity of a Government to be a Mark of its *Divine Institution*; it may indeed be an Argument to prove that *Monarchy* was the most natural Government, because the most simple and easy for Men to light on; and so no doubt it was in the first Ages of the World, before *Ambition*, *Avarice* and *Luxury* had debauched the Minds of Monarchs, the best sort of Government. And so on the other side, there is this to be objected against it, that the setting up of so many Commonwealths upon the Ruins of Monarchies, shewed that Men found great Mischiefs and Inconveniencies in that sort of Government, when once it grew *Tyrannical*, or else they had never departed from it; and this made them, as *Brutus* said at the beginning of the *Roman Commonwealth*, to invent other sorts of Government, which might partake of all the Benefits without the Inconveniencies of *absolute Monarchy*.

But as for your Instance of God's being himself King over the People of *Israel*, this touches not the Question in hand, since that being a *Theocratical*, and not a *Civil Commonwealth*, could concern no other Nation but themselves: And as for your other Instance of God's making *Saul* King, I hope you will not bring that for an Argument of his Approbation, which it appears he was so angry with the *Israelites* for desiring; and tho' it is true, he did at their Request make them a King, yet it is apparent God would have been much better pleased had they still continued without one: So that I think there can no conclusive Argument be drawn from any Examples in the *Old Testament*, to prove *Monarchical Government* to be of *Divine Institution*.

M. Well, however slight you make of my Authorities out of the *Old Testament*, yet I hope I shall be able to shew more cogent ones out of the *New*, to prove, that *Monarchy* is the only Power instituted, or so much as taken notice of, by our Saviour *Christ* and his *Apostles*. And therefore when he would command the *Pharisees* to yield Obedience to the Supreme Power then in being, he bids them, upon their shewing him a Piece of Money, to render to *Cæsar* the things that are *Cæsar's*; not taking any notice of the *Senate* or *People*, whose Authority these *Cæsars* had usurped. And if *St. Paul*, in his Epistle to the *Romans*, had only said, Let every Soul be subject to the *Higher Powers*, and said no more; then Men might indeed have disputed, whether *St. Paul* by *Higher Powers* had not meant as well other Governors as *Kings*, or other Forms of Government as *Monarchy*. But the good luck is, *St. Paul* hath been his own Interpreter; for, after the general Doctrine of Obedience to be given by all Men to the *Higher Powers*, he proceeds next to charge it home upon each particular Man's Conscience, under pain of Damnation, saying, *Wilt thou not be afraid of the Power?* which Power he expounds in the Singular Number, restraining it to one Person: *He is the Minister of God to thee*, &c. It is not, *They are the Ministers*. And then again, *He beareth not the Sword in vain*. And a third time, in the same Verse, lest we should forget it, he says, *For he is*

Matt. 22. 21.
E. P. O.

the Minister of God, &c. So *St. Peter* also doth the like; for the self-same Word that *St. Paul* useth for *Higher*, in *St. Peter* is translated *Supreme*: So that tho' in our *English* Bibles the Words differ, yet in the Original they are both the same. And *St. Paul* might have been Englished, *Let every Soul be subject to the Supreme Powers*; or *St. Paul* might have been also translated, *Whether to the King as to the Higher*. Yet there is this difference, that whereas *St. Paul* useth the Word in the Plural Number, *St. Peter* hath it in the Singular, and with Application to the *King* only, without taking any notice of any Governors but *Kings*, and those sent by them. And it is farther to be noted, that *St. Peter* and *St. Paul* wrote their *Epistles* at a time when the *Roman Senate* had some share in the Government; and that it was (in appearance at least) a *Commonwealth*: So that some Authors suppose, that notwithstanding the Emperors by strong hand had usurped a Military Power, yet a great share of the Government was for a long time, nay even then, in the Senate and People. But for all this, neither of the two Apostles take any notice of any such *Popular Government*; no, nor our Saviour himself, who divideth all between *God* and *Cesar*, and allows nothing, that we can find, for the *People* or *Commonwealth*.

F. I think your Quotations out of the *New Testament* will prove of no more weight than those from the *Old*, and that they will not make out *Monarchy* to be of *Divine Institution*, any more than the former: For our Saviour's Answer to the *Jews* signifieth no more, than that *Tribute*, and all lawful *Dues*, were to be paid to *Cesar*, as the *Supreme Power* then in being; to answer those *Jews*, who doubted whether any Obedience were to be given to a foreign Prince of another Religion than their own. The like Answer may be given to what *St. Paul* says in the *Romans*, *Let every Soul be subject to the highest Power*; which was chiefly directed to the newly converted *Jews*, who might doubt, as well as their Countrymen in *Judea*, whether they were bound in conscience to be subject to Heathen Magistrates; as also against the Sect of the *Gnosticks* (then newly sprung up) who, tho' they called themselves *Christians*, yet looked upon themselves to be thereby discharged from all Subjection or Obedience to Civil Powers; being those whom *St. Jude* expressly speaks against, *Who despise Dominion, and speak evil of Dignities*. And therefore when *St. Paul* speaks of such *Higher Powers*, it is not in the Plural, but Singular Number, terming him, *the Minister of God*; because that at that time there was no such thing as a *Commonwealth* (as he knew of in the World) the two greatest Empires, the *Roman* and the *Parthian* being then governed by *Monarchs*. The like I may say to that other Text you have quoted out of *St. Peter*, which may very well be reconciled with that Place of *St. Paul*; tho' the one called the *Higher Powers*, *the Powers ordained of God*; and the other calls them, *an Humane Ordinance*, or *Creature* (as it is in the Original) since they certainly derive their Authority from *God*, tho' by the Mediation or Consent of Men.

Jude 8.

And I believe you will prove mistaken in affirming, that the Senate or People had any Power when *St. Peter* and *St. Paul* wrote these *Epistles*: For it plainly appears, that whether these *Epistles* were written in the Reigns of *Claudius* or *Nero*, the Government was then wholly in the *Roman Emperors*: For tho' I grant, that during the Time of *Augustus* the Senate had some shadow of Power, and that divers Provinces were under their Government; yet by that time *Tiberius* had reigned but a few Years, he quite took away all Power from the Senate, and made them no more than what the Parliament of *Paris* are to the *French King*, meer Ministers of his Tyranny, and oblig'd to verify all his Edicts; and the Compliance and Flattery of these Senators was so servile, that they passed whatsoever Decrees he sent them, without the least Hesitation; till it became so fulsome even to himself, that it made him cry out, *O gens in servitutem nata!* So that all you have said on this Subject signifies no more, than that our Saviour and his Apostles did not come into the World to dissolve or alter the Civil Governments, or the Policies of Kingdoms, but to command Obedience to them, as they found them settled in the World, as the moderate *Melancthon* very well observes, *Christus non venit mutare Politia*.

And I doubt not, but if our Blessed Saviour had thought fit to come into the World about half an Age sooner, and to have been born and preached the Gospel in the time of the *Roman Commonwealth*, but he would have commanded the *Jews* to have paid Tribute to the Senate and People of *Rome*, as well as he did to *Cesar*: And *St. Peter* would have enjoined all Subjection and Obedience to be given them; and

Dialogue the Second.

and might have said with greater Reason of them, than of those subordinate Magistrates they sent to govern their Provinces, that they were the *Ministers of God*. And if your Arguments for the *Divine Right* of Kings be true, it would be no Rebellion at this day for Subjects to rise up and destroy the Supreme Powers in all *Commonwealths*, because they are not *Monarchical*; and consequently those, in relation to whom God hath left us no Rules of Obedience. Which Doctrine if any Man should offer to preach in the Territories of *Venice* or *Holland*, I think, in the former the Preacher might very deservedly be sent to the Gallies, and in the latter they would at least send him a Pair of Shoes. But if you have any thing farther to urge for the *True Divinity* of Monarchy, pray will you let me hear it, for I am weary with answering such Trifles.

M. I confess I have not much to object against what you have now replied, and therefore I shall insist no farther upon it; only thus much I am satisfied of, that God, by his own Example, as well as Institution among the *Jews*, seems more particularly to have approved of Kingly Government (and that absolute too) than any other. Not that I will condemn all *Commonwealths* as unlawful, but that as being *Sovereign Powers*, they may be also ordained of God.

But I have another Objection to make against your *Hypothesis*, and that is, you have in your former Conversation supposed a natural Property in things, precedent to Civil Government, which can scarce be understood. For by what Right can any Man lay claim to any Property, but by the Laws of the Government in which he lives? And how can there be any such Laws before there was some Supreme S. P. P. Legislator to make them? So that the only way (I know of) to solve this Difficulty, is to suppose, that the sole Dominion of things was in *Noah* after the Flood; and that whatsoever Property in any thing his Posterity possess'd in several, they enjoyed it by his Grant and Allotment, and in virtue thereof transmitted the same to their Posterity, without waiting for the Election or Consent of the People, or entering into any Articles of Capitulation with them whom they were to govern, as you suppose was necessary for the first Institution of *Civil Government*. And the Texts in the tenth of *Genesis* seem to import as much: *By these were the* Ver. 5. 32. *Isles of the Gentiles divided in their Lands, every one after his Tongue, after their Families in their Nations. These are the Families of the Sons of Noah, after their Generations in* Ver. 32. *their Nations; and by these were the Nations divided in the Earth after the Flood.* That is, not only the Nations themselves, but the *Isles* or *Countries* of the Earth were divided by these Patriarchs, amongst their Posterities, into particular Shares and Territories.

And so likewise in all the Absolute Monarchies in the World, all the Property that Men enjoy, either in Goods or Lands, is either actually in the Prince, or else was at first derived from him; tho' I do not deny but when such a distinct Propriety in Goods or Lands is once instituted by the *Monarch* in any Kingdom, that he cannot again alter it or take it away, without manifest Violence and Injustice.

And hence it is that our common Lawyers maintain, that all the Lands in *England* are held of the King, either mediately or immediately: For upon the Conquest by *William* the Conqueror, all Mens Estates were thereby vested in him. So that there is no way so natural and easy to solve all those Difficulties that do arise concerning the Original of *Civil Government* and *Property*, than to make them begin together in the Persons of *Adam* and *Noah*, and thence deriv'd to all their Posterity: So that whatsoever absolute Dominion *Princes* or *States* have claimed in those Countries and Places, which they have either seiz'd upon themselves, as the first Occupants, or else have conquer'd from others, they enjoy'd them meerly as they represented *Adam* or *Noah*, the first Monarchs of the World. Nor can we other way avoid these several other intolerable Inconveniences and Absurdities, that will follow from supposing an original Community of things, or that every Man at first might take what Quantity of Land he pleas'd, without the Authority or Assignment of any Supreme Power.

F. As to what you say concerning God's approving Monarchy above all other Governments, by his instituting it among the *Jews*, that way of arguing is very uncertain and fallacious; since one may by the same reason argue, that the *Ceremonial* Part of the *Mosaic Law* was the best that God could have contrived, because he was pleas'd to prescribe it to the *Jews*, during the time they should be under the Government of it. No doubt God prescribed them such a Govern-

ment both in Church and State, as he thought fit for their present Occasion and Inclinations ; but whether that were the best, or of perpetual Institution, is no where said.

But as for the other part of your Argument, I thought you had been very well satisfied by what I said at our first Meeting, that neither *Adam* nor *Noah* had, by Grant or Donation from God, a sole Right to the Earth and all things therein. But since you are not yet satisfied with what I there said, I shall answer this Objection more particularly ; and I doubt not but I shall make it so plain to you, that you your self shall confess, that there is no such great Mystery or Difficulty in the tracing of *Property*, as also *Civil Government*, to their first Originals, without supposing any such absolute Dominion or Property in *Adam* and *Noah*, or in any other Supreme Power, as their Successors. I shall therefore first of all remove the main Obstacle you have laid in the way, and shew you, that the Places of Scripture you have cited to this purpose do not prove the thing you intend them for. I did before shew you, that there was no manner of ground for Sir *R. F.*'s Opinion, that none of *Adam*'s Sons could have a Property in any thing, without *Adam*'s Assignment ; nor that any of *Noah*'s Sons, when separated from their Father's Family, could have any *Property* in any thing but by their Father's Donation ; *Scripture* and *antient History* being altogether silent in these Matters. And therefore you are fain to lay hold of the first Place of *Scripture* that you think might serve your turn, which will not do the business neither.

For supposing I should grant you, that in the Dispersion or Division that was made of Mankind after the Flood over a great part of the World, the *People* that then followed their Ancestors or Leaders after this Dispersion (tho' the Text doth not mention any such thing) followed them as Princes or Monarchs ; yet this will not prove what you would have, that these Fathers of *Nations* made this Division of the Earth in right of that Dominion which God conferred at first on *Adam* and *Noah* ; since (as I have already proved) if this Division had been made in right of the Dominion that descended upon *Noah*, it ought to have been performed by the Authority of only one Man, and him the eldest Descendant of the eldest Son of *Noah* : And I have also sufficiently shewed you the Absurdity of this Fancy of such a *Divine Right*. And besides, it plainly contradicts it self ; for either this Division you talk of was made in the Days of *Noah*, or it was not : If the latter, then it is apparent, that from the time of *Noah* to that of *Heber* there was a Community of Things and Properties ; tho' you have asserted the contrary : If the former, and that the Earth was divided before, then to what purpose was this Division in the Days of *Peleg* ? And tho' I grant, that about that time every Language or Nation might, under the Conduct of their Prince or Leader, seize upon some Territory or Island sufficient for them to inhabit in ; yet doth not the Text tell us, whether the Country they lived in was by them divided into particular Shares, or whether they made use of it in common, as the *Indians* of *America* do at this day, where the Quantity of Land doth far exceed that of the Inhabitants that live in it.

Nor lastly, supposing that a Division was made of these Countries they then inhabited, doth it tell us, whether it was done by the sole Authority of their Prince or Leader, claiming as his own the whole Dominion of it, so that no Man could have Right to a Foot of Ground in it but himself ; or whether this Division was made by the joint Consent and Agreement of all the rest of the Heads of Families, and other Freemen that went along with him. The Scripture is silent in these Circumstances, that only telling us, that the Great Grand-sons of *Noah*, mentioned *Gen. 10.* *The Isles of the Gentiles were divided in their Lands, every one after his Tongue, after their Families in their Nations* ; and that this Division was in the Days of *Peleg* : But no where declares, whether every particular Region or Country was then divided into distinct Shares or not.

And as for what you say, that all Princes, and Conquerors of Territories and Countries, have the like absolute Dominion and Property in them, as *Adam* and *Noah* had over the whole World ; if it were no more than that, I doubt it would be very little ; since I have already proved, and I think you must grant, that no Monarch at this day can claim his Crown as the right Heir of *Adam* or *Noah*, or as their Representatives ; and it will, I think, be much harder to prove, that the sole Property of an acquired Country or Kingdom must be in them by virtue of any such Right. But as for your Instance of *William* the Conqueror's having a Right to all the Lands in *England* by Conquest, since it requires somewhat a longer Answer

swer than the Time will now afford, I shall refer speaking farther of it till another Opportunity : But pray, Sir, at present make me see a little plainer what those Inconveniences and Absurdities are that will follow from my Hypothesis, that God at first gave the World and all Creatures therein to Mankind, to be used and enjoyed in common, if they thought fit.

M. I shall shew you some farther Absurdities that will follow from it than I have done already : For tho' *Grotius* and *Selden* indeed maintain, that a Community of things was by the Law of Nature, of which God is the Author, and yet that such a Community should not be able to continue, seems to derogate from the *Providence of God*, to ordain a Community of things which could not continue. And it seems also an Act of high Presumption in the Descendants of *Noah*, to abrogate the *Natural Law of Community* by introducing that of a Propriety in things. E. O. G. p. 43.

F. I pray give me leave to interrupt you, that you may not run on in a Mistake : For let *Grotius* or *Selden* assert what they please, I am not tied to submit to it ; and therefore when I say, that God gave the World, and all the Creatures therein, to Men, to be used in common, if they please ; I thereby understood, that God hath by the *Laws of Nature* commanded nothing in this matter, but hath left the Earth and all things therein to be used in common, or in several, as may best consist with the Convenience, Necessity, or Customs and Laws of each particular Nation or Commonwealth, who God designs should live peaceably together, and make the best use of the Country where they inhabit, and the things therein contained, for their own common Maintenance and Safety, according to the Expression of the Royal Psalmist : *But the Earth hath God given to the Children of Men, i. e. all the Descendants of Adam.*

M. Well, suppose it were so, the prime Duties of the *Second Table* are chiefly conversant about this *Right of Propriety* ; but if this *Propriety* were introduced by *Ibid.* Humane Laws or Agreements, as *Grotius* and you your self suppose, then both the *Moral* and *Divine Law* would depend upon the *Will of Men* ; so that there could be no *Law of Nature* against Adultery or Theft, if Women and all things else had been in common.

F. This Objection wholly proceeds from your not having any distinct or true Notions of the Nature and true Original of *Propriety* ; and therefore if you please to hear my Account of it, I hope you will grant (when I have done) that your Objection against the Community of things will be to no purpose. I do therefore in the first place distinguish between a *Natural* and a *Civil Propriety* : By the former Men might be guilty of *Theft* before *Civil Propriety* was instituted ; but as for *Adultery*, that was always unlawful both by the Laws of God and Nature, which abhors Community of Women and promiscuous Copulations ; and God hath particularly ordained, that *the Man and his Wife should be one Flesh* : And no Man, that maintains a natural Community of things, ever supposed that Women were amongst those things that were to be in common, or that a Man had the same kind of Propriety in his Wife, as in his Horse ; so that the Command against *Adultery* might very well consist with the Community of things.

M. Suppose I grant this, I do not understand how there can be a natural Propriety, and yet a Community in things, as you suppose.

F. I wonder you should not be able to apprehend this, and have been so often at an Ordinary and a Play-house : At the former, you know, tho' a Man hath a Right to his Dinner, yet all the Meat at the Table being in common, he cannot call any part of it his own, till he hath cut it or divided it from the rest ; and at the latter a Man hath a Right to a Place either in the Box or in the Pit, and yet he cannot tell where it is, till he hath placed himself in it, or sent some body to keep it for him.

M. I do apprehend what you mean ; but pray explain to me the Manner of this *Natural Propriety* a little more at large.

F. I would readily do it (since if that were well done, I grant it would be a great step to the clearing of the Original and Nature of all *Civil Power*) were it not now too late to enter upon so long a Subject ; and therefore I think we may both be sufficiently tired with Talk, so as to put it off until another Opportunity, when I shall give you my Thoughts of the true Original of *Civil Government*, in what sense it proceeds from God, and yet how far the *Consent of the People* is necessary to make it obligatory on the Consciences of the Subjects ; which when it is

once

once well settled, I hope there will be little need of disputing farther, whether this *great Alteration* hath been brought about by lawful Means or not.

M. I thank you for the pains you have taken to inform my Understanding in this matter : And therefore since 'tis now very late, I desire we may adjourn our Conversation to another time ; and then I desire that you would prepare your self to discourse with me of the second important Question we agreed on, *viz. the Irresistibility of all Supreme Powers by their Subjects* ; not not only because Resistance in any case whatsoever is inconsistent with Supreme Power, and destructive to the Peace of Civil Society, but chiefly as they derive their Authority immediately from God, and are only to render an Account to him of their Actions.

F. I will not deny but what you have said is true in some sense, *That all Sovereign Power is derived from God, and is also as such irresistible by Subjects* ; but to affirm generally and absolutely (as most of your Opinion do) that all Commands and Acts of Men endued with this Supreme Authority, whether good or bad, lawful or unlawful, are part of that Authority derived from God, and therefore irresistible in any case, or upon any necessity whatsoever, is so dangerous a Proposition, that I know none that hath contributed more to the Encouragement of the King, and the Popish Faction he favoured, to make all those Breaches upon our Laws, Religion, and Liberties, which we have suffered since the Beginning of his Reign.

M. I am so well pleased with the Freeness and Ingenuity of your Conversation, that I desire nothing more than to discuss this important Question with you at our next Meeting : But I beg your pardon, if being taken up by some Business to morrow, I adjourn our next Meeting to the Day after, when, if you please to come at the same Hour as you did to night, you shall here find me ready to wait on you. In the mean time I must bid you good night.

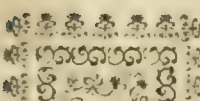
F. Your Servant, Sir, I wish you heartily good night ; I will not fail to meet you at the Time appointed.

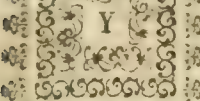


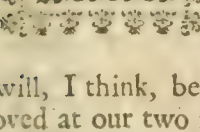
Bibliotheca Politica.

DIALOGUE III.

Whether Resistance of the Supreme Power by a whole Nation or People, in cases of the last Extremity, can be justified by the Law of Nature, or Rules of the Gospel.

F.  O U are welcome, Sir ; I see you are a punctual Man to your Word. Will you be pleased to sit down by the Fire, and drink a Dish of Tea ?

 Y. M. I thank you, Sir : I assure you, I love to be punctual in small things, as well as in great ones, when I am not hinder'd or prevented by Business.

 F. Before we come to the Question we the last time resolv'd to make the Subject of our present Entertainment, it will, I think, be convenient for me to look back, and see what I have already prov'd at our two former Conferences, viz.

1. That *Adam* had not, either by *natural* Right of Fatherhood, or by *positive* Donation from God, any such Authority over his Children, or Dominion over the World, as you pretended.

2. That if he had, yet his Sons or Heirs had no Right to it.

3. That if his Heirs had, there being no Law of Nature, nor positive Law of God, that determines who is the right Heir in all Cases that may arise ; the *Right of Succession*, and consequently of bearing Rule, could not have been certainly determin'd without the Judgment of the rest of the Children or Descendants of *Adam*.

4. That the Knowledge of the *right Heir* of *Adam* (supposing still there was one) being now long since lost, no Prince or Monarch in the World can graft any Title upon this Paternal Dominion of *Adam* or *Noah*.

5. That all Authority of inflicting Punishments of Life and Death, or other less Penalties, for the Breach of the *Laws* of *Nature* or the Transgression of the *Civil Laws* of the *Commonwealth*, is originally derived from God, as being that Power with which God, in the State of Nature, hath intrusted all Masters or Heads of separate Families, and this not as Fathers, but as Masters.

6. That since all Kingdoms and Commonwealths at this day do owe their Original either to the *Election* of the People, or to *Usurpation* or *Conquest* ; God doth not now by the ordinary Course of his Providence confer this *Divine Authority* on any Persons whatsoever, so as to give them a Right to the People's *Allegiance* without the People's *Consent* first had, or else an owning of their Titles by a subsequent voluntary Submission to them.

M. I grant indeed, that you have with great Labour, and some appearance of Reason too, endeavoured to prove these Principles you have here laid down; yet however, tho' the *five first* of them should be true, I have a great deal still to except against the *last*, if you please to hear me. For I think 'I can shew you a great many evil Consequences that will follow from this Principle, of making the *Consent* or *Submission* of the People at all necessary to the conveying of a Supreme Power, or of that Divine Authority which you grant to be derived from God himself, on all Monarchs and Supream Magistrates in Commonwealths.

F. I pray give me leave a little to interrupt you. I know very well what this evil Consequence is, of supposing the *Consent* of the People as a Means at all necessary for the conveying of this Divine Authority; that is, in plain *English*, because it will destroy your darling Doctrine of PASSIVE OBEDIENCE and NON-RESISTANCE; therefore if it be so, pray let us rather fall presently to the Question it self, than argue by Consequences; which if we should go that way to work, I have my Consequences likewise to urge, some of which I have given you already. Therefore, if you please, let us begin a fairer way, and hear me propose those Heads, in which I doubt not but we do both agree; and then I will bring it to the main Case or Question, in which perhaps we differ.

M. I confess I had somewhat more to say, which would have tended to prove this Doctrine of *Non-resistance*; but since you are pleased to propose another Method, which you better approve of, I am ready to comply with you: Therefore, Sir, go on in what way you think fit.

F. I shall then in the first place lay it down for a Principle (which I suppose you will not deny) that all *Civil Power* being from God, it was principally instituted by him for the *Peace, Happiness, and Safety* of Mankind; that is, of all the Subjects who are to live together in a Commonwealth or Civil Society.

2. That all Kings or Supreme Magistrates are likewise secured, by God's Authority, in those due Rights and Prerogatives, which are necessary for their well discharging this great Trust or Duty which God requires of them, and in consideration of which the People at first *elected* or submitted themselves to them.

If therefore you grant, as I suppose you will, these two reasonable Propositions, the Question will amount to no more than this: Whether, if the Supreme Power, in any Kingdom or Commonwealth, so far abuses this Trust, which God by the People hath committed to them, and instead of preserving and defending the Lives, Liberties, and Estates of their Subjects, they manifestly go about to destroy or grievously to oppress them, by making them, instead of Subjects, meer Slaves and Vassals; the Question, I say, then is, whether, if such general Violence or Oppressions be committed upon the whole People, or so considerable a part of it, as that the Safety and Well-being of the *Commonwealth* cannot in any likelihood subsist without it; the *People*, or the most considerable part of them, may not (in case their Lives, Liberties, and Persons are unjustly assaulted and oppress'd by the Officers or *Standing Armies* of the Prince, or other Supreme Powers) for their own defence take up Arms to defend their Lives, Liberties, and Estates, against such an armed Force and Violence. Where, by the way, I desire you to take notice, that I do here absolutely disclaim *all Resistance* of, or Self-defence against Civil Authority, or the Officers commissioned by it, by any *private single* Person, whether such Power be exerted according to Law or not, or else abused in some cases to the Hurt or Destruction of such single Person only. So that I suppose this *Resistance* to be lawful only in case of a *general Destruction*, or *intolerable Oppression*, of the whole People, or at least a very considerable Part of them, and those that are in the chiefest Places of the Administration.

M. I confess, the Doctrine of *Resistance*, as you have put it, seems at first somewhat plausible, and to tend to the common Good and Preservation of the People or Civil Society. But let me tell you, I am of opinion, that whenever it comes to be put in practice, it proves (like the other *Speculations* of *Commonwealths-men*) more hurtful than beneficial to the common Safety and Preservation of the People; and consequently more destructive to the main Ends of Government, than conducive to the Good and Happiness of Mankind; and last of all, that such *Resistance* cannot well be maintained or executed without the Depositing or absolute Destruction of the Prince, or other Supreme Magistrates, whatever may be pretended to the contrary. And indeed it is almost impossible to suppose, that any Monarch or Supreme Magistrate should ever (unless they were stark mad) purposely go
about

about to kill or destroy their Subjects, in the Multitude and Safety of whom consist his chief Strength and Riches. And you may as well tell me, that a Shepherd, whilst he is in his right Wits, should go about to kill or destroy his Flock, as that a Monarch should wilfully intend to kill or destroy his People.

To conclude, since the People must be, in all Cases of *Tyranny* or *Oppression*, their own Judges, and Executioners too; there is no *Rebellion* so rank and wicked, that this Pretence of a *Self-defence* of Men's Lives, Estates, and Liberties, may not justify; whereas indeed it is contrary to all natural and Civil Justice, for the injured Party to be his own Judge and Executioner too: For then the other Side may pretend to the like Right, and the Trial must be referred to Force and Arms, in which Contention if the People are overcome, they are certainly reduced to a worse Condition they were before; but if the Prince or Supreme Magistrates have the worst on't, the Civil Power then in being is absolutely ruined: So that whether the People or Magistrate overcome, the State of both of them is very deplorable; besides divers other evil Consequences of this Doctrine, which I shall defer, till I hear what you can say to what I have now urged against your Opinion.

F. You have made a very plausible Speech, in setting forth the dreadful Consequence of this Doctrine of Resistance in any case whatsoever; and I confess, if what you lay down be true, viz. that such Resistance always brings along with it greater Misery upon a People than what the utmost Violence and Oppression of Princes can produce, then your Consequence would be also true, that such Resistance is never to be practised upon any account whatsoever. So, on the other side, if that be not true, neither will your Consequence signify any thing.

I suppose you will not deny, but that there may be such a thing as a *Tyrant*, and that that part of Mankind who live under him may be sensible of his *Tyranny*; or else the Definition which K. James I. gives us of a *Tyrant*, in a Speech which he made to the Parliament in 1603. would be altogether in vain. But the Words are so fit for this purpose, that I will read them to you out of his Works. *I do acknowledge, that the special and greatest point of difference that is between a rightful King and an usurping Tyrant, is this: That whereas the proud and ambitious Tyrant doth think his Kingdom and People are only ordained for the Satisfaction of his Desires and unreasonable Appetites; the righteous and just King doth, by the contrary, acknowledge himself to be ordained for the procuring of the Wealth and Prosperity of his People.* And so likewise, in another Speech he made to the Parliament, he hath this memorable Passage: *That a King governing in a settled Kingdom leaves to be a King, and degenerates into a Tyrant, so soon as he ceases to rule according to the Law.* So that since it is plain, that the People may judge when they have a *Tyrant* instead of a *King* to rule over them, and that under such a *Tyrant* the Condition of the People may be very deplorable; the Question still remains, what is best for them to do in this case? Whether it be better for them, or they are obliged by the Laws of Reason and Nature, patiently to submit to it? or else, if they can, either by their own Force, or the Assistance of a foreign Prince, to cast off the Yoke? And I think I may still maintain, that they may do it, notwithstanding what you have yet urged to the contrary.

In the first place therefore, tho' you count it an almost impossible thing to suppose, that a Prince or Monarch would ever go about to murder or destroy his Subjects; yet as incredible as it is, I can give you several Examples out of History, both antient and modern, that some *Tyrants* have been so brutish, as not only to endeavour it, but actually to put it in practice. Of the first kind is that of *Caligula*, whom *Suetonius* mentions to have wish'd, that all the People of *Rome* had but one Neck, that he might cut it off at once. The other is of *Nero* (in the same Author, as also in *Tacitus*) who set the City of *Rome* on Fire, and consequently would have burnt all the People in it to please his Humour, and that he might sing his *Ballad* of the Destruction of *Troy* the more naturally whilst it burnt. A third Example I find related in *Mocquet's Travels into the East Indies*, of a certain King of *Pegu*, about an hundred Years ago, who, by the persuasion of some of his Diabolical Priests or Magicians, took such an Aversion to his Subjects, that he was resolv'd to destroy them, and therefore forbid them to sow their Lands for two or three Years, by which means a great part of them died of Famine, or were forced to devour each other. And in such cases as these, I suppose, the Laws of Nature and Reason will justify *Self-defence* in the People; and sure it had

Vid. Mocquet's Travels, lib. 4. p. 333.

been lawful for the People of *Rome* to have resisted *Caligula's* Guards, if he had gone about to put his wicked Wish into execution; or likewise to have resisted or put to death those Incendiaries they found firing the City, tho' they might have had the Emperor *Nero's* Commission for it: So likewise sure it would have been as lawful for the People of *Pegu* to have resisted those whom the Emperor might have sent to hinder them from ploughing and sowing their Lands. And that I am not the only Man of this Opinion, I desire you to consult what *Barclay* hath, in his Treatise *contra Monarchomachos*, which he writ against *Buchanan*, *de Jure regni apud Scotos*, and the Author of *Vindicia contra Tyrannos*; where, tho' he be a most zealous Asserter of the unlimited and irresistible Power of Princes, yet in his third Book, Chap. 8. he speaks to this effect; the Sense of whose Words, as near as I can, I will give you in *English*.

" Now if any one should say, But must the People always yield their Throats
 " to the Fury and Cruelty of Tyrants? Must they patiently permit their Cities to
 " be destroyed by Hunger, Fire or Sword, and their Wives and Children to be
 " exposed to the Lust of a Tyrant, and also themselves to be brought into the ut-
 " most Dangers and Miseries of Life? Must that be denied to them, which is
 " the Right of all Animals by Nature; that is, that they may repel Force with
 " Force, and defend themselves from Injury? To this it may easily be answered,
 " that Self-defence, which is of natural Right, ought not to be denied to the Peo-
 " ple: And therefore if the King doth not only exert his Hatred against some
 " single Persons, but also shall go about to destroy the Body of the Commonwealth,
 " of which he is Head; that is, shall exert his Hatred against the whole Peo-
 " ple, or some considerable Part of them, by an horrid and intolerable Cruelty or
 " Tyranny, there is a Power in the People, in this case only, of defending itself,
 " but not of invading the Prince, or of revenging the Injury given; neither of de-
 " parting from their due Reverence, because of the Injury receiv'd: In short, it
 " hath Right only of repelling a present Force, but not of revenging a past Injury;
 " for one of them indeed is from Nature, that we should defend our Lives and
 " Persons from Injury; and therefore the People may be able to prevent an Evil
 " before it be done, but cannot revenge it upon the King after it is done. There-
 " fore the People hath this Right more than a private Man, that he hath no other
 " Remedy left him but Patience; whereas the People, if the Tyranny be intole-
 " rable, may still resist, tho' with Respect.

In all which this Author hath there said we may easily understand his Meaning, unless it be in this of resisting Force with Respect and Reverence: For I cannot understand how a Man may fight against his Prince with Reverence, or give his Guards a Knock over the Pate, or a Cut in the Face, with Respect to the Prince's Authority. But the Reason is plain why the People may act thus, because when a Prince once goeth about to destroy and make War upon his People, he doth not act then as a Monarch, but like a Cut-throat, and Enemy to the Commonwealth: And no Man can imagine a Will to destroy and to protect the People can at once subsist in the same Person.

M. But pray give me leave to interrupt you a little. I grant indeed, that by the Political Laws of any Government, which are made to secure the Rights of the Subjects in their Lives and Fortunes, no Prince can or ought to take away his Subjects Lives or Estates contrary to Law; yet by the IMPERIAL LAWS in every Government, and by the Laws of the Gospel, which (as I shall hereafter shew) establish those Laws in all perfect Governments (and particularly in the *English*) all these Rights legally belong to the Civil Sovereign, especially to be accountable to none but God, to have the sole Power and Disposal of the Sword, and to be free from all coercive and vindicative Power, and from all Resistance by Force. It is by these Common Laws of Sovereignty, that the Gospel requires Passive Obedience, which is but another Name for Non-resistance: These Laws are in eternal force against the Subjects in defence of the Sovereign, be he good or evil, just or unjust, Christian or Pagan; be he what he will, no Subject or Number of Subjects whatsoever can lift up his or their Hands against the Sovereign, and be guiltless by these Laws. Therefore for the Subjects to bear the Sword against their Sovereign, or to defend themselves by force against him or his Forces, is against the Common Laws of Sovereignty; and by consequence Passive Obedience, even unto Death, becomes a Duty in Sovereign Governments, by virtue of those Laws, and we are not to resist them upon any pretence whatsoever; but therefore all Subjects are bound

bound to suffer Death wrongfully, rather than to resist them upon any pretence or account whatsoever. So that let *Papish* Writers (tho' never so *insolent*) say what they please concerning the *Lawfulness of Resistance* in some cases, yet we of the *Church of England* have learned better things from the *Scripture* and the Examples of the *Primitive Christians*, which we think our selves obliged most strictly to observe. And therefore in relation to our own Government, and the present State of Affairs, I shall reduce all that I have to say against *Resistance* of the King, or those commissioned by him, into this *Syllogism*: Not to be resisted by the Subjects is an inseparable Right of all Sovereign Power: But the King is here the only Sovereign Power. *Ergo*, the King is upon no pretence whatsoever to be resisted by his Subjects. So that, not to quarrel any longer about Words, *Non-resistance* is the same thing with *Passive Obedience* and *Submission*, and by consequence these are required by the *IMPERIAL LAWS* of the Government. Therefore whatsoever the *Imperial Laws* of the Government require of its Subjects, if it be not contrary to God's Laws, they are bound to perform it. But *Passive Obedience*, or patient suffering of Injuries from the Sovereign, is not forbid by God's Laws: And therefore Subjects are bound to perform it, where it is required by the *Imperial Laws*.

F. I shall forbear to say any thing, as yet, concerning what Doctrines the *Scriptures* teach, or the *Primitive Christians* practised concerning this matter, because I desire to discourse that Question apart from this of the Laws of Nature or Reason, which we are now upon: Therefore I must tell you, that tho' this new Term of *Imperial Law* of *Non-resistance* may sound very prettily to their Ears who mind Words more than Sense; yet I must freely confess, that I am altogether a Stranger to this Notion of *Imperial Laws*, as also of the Distinction you make between the *Imperial* and *Political Laws* of this Kingdom: And if by *Imperial Laws* you mean those of the *Roman Empire*, I never knew that those Laws had any thing to do in *England* before, but always supposed the *Political Laws* of our Country to be the only Measure of the King's Prerogative, as also of the Subjects Obedience and Subjection. Nor do your own *Civil Laws*, by as much as I know of them, make any difference between the *Imperial* and *Political Laws* of the Empire; for by the one, as well as the other, the *Civilians* understand such *Laws* or *Edicts* of the Emperors, which, with the Approbation of the Senate, were made for the Peace and Well-government of the Commonwealth; but I never yet heard of any *Imperial Laws*, whereby the Emperor declared, that he had a Right to plunder or murder all the Citizens of *Rome*, or that they believed they were obliged to suffer by your *Imperial Laws* without any Resistance. I am sure the Senate and People did not believe, that the Emperor had any such Authority, when they declared *Nero* and *Maximin*, for their intolerable Cruelty, not only Enemies of the Commonwealth, but of Mankind. But if by these *Imperial Laws* of *Non-resistance* you mean no more than what you laid down in your Syllogism, that it is an inseparable Right or Prerogative of Sovereign Powers, not to be resisted by their Subjects, when you have proved this Proposition by the Laws of Nature and Reason, I shall then believe it. But as for your Conclusion, it being founded upon these Premises, it needs no Confutation; for if the *Imperial Laws* of Government do not require your *Passive Obedience*, then Subjects are not bound to perform it. And to shew you the Falseness and Absurdity of this Assertion, that whatsoever the *Imperial Laws* of any Government require of its Subjects, if it be not contrary to God's Laws, they are bound to perform it. Instead of *Passive Obedience*, or patient suffering of Injuries, let us insert, *To give up to the Sovereign all our Civil Properties and Estates, if demanded by him, is not forbid by God's Laws; and therefore Subjects are bound to perform it, whenever it is required by the Imperial Laws*: For certainly the absolute Disposal of the Estates of the Subjects is as inseparable a Prerogative of Sovereign Power as *Irresistibility* it self; as I think I am able to prove, if you think fit to dispute that Question.

But at present I shall only confine my self to confute the *Major* in your *Syllogism*. In the first place therefore, though I do grant what you lay down for a Ground, to be true, That it belongs to *Sovereign Powers* to be accountable to, or punishable by, none but God; yet, I suppose, *Resistance* of their Violence and Tyranny may very well be performed by the People, without calling them to a *Judicial Account*, or erecting a *Tribunal* for that purpose: Calling to an Account, and Punishment, are Acts of Authority of Superiors over Inferiors; but *Resistance* for Self-defence

is a *Right of Nature*, and which no Man, by entering into *Civil Government*, ever parted withal, but out of Consideration of a greater Good to be obtained thereby, (*viz.*) his own greater Security, together with the common Good of that civil Society, whereof he is a Member; which, when by the Prince's Violence, it is once like to be wholly lost, his *natural Right of Self-defence*, for the preservation of himself and Family, again takes place: Nor doth he then resist the Supreme Powers as such, but as Murderers and Cut-throats, who by going about to destroy the People have already lost all that Right they formerly had. And of this Opinion is that moderate *Romish* Author, *Barclay*, before cited, who in the 16th Chap. of the Book last quoted, hath this remarkable Passage.

"What then? Can there *no Cases* happen in which it may be lawful for the People, by their own Authority, to rise up, and resist a King governing *Tyrannically*? His Answer to this Question is, there are certainly *none* as long as he continues *King*: for the Scriptures forbid it, which say, *Honour the King*, and *he who resisteth the Power, resisteth the Ordinance of God*. Therefore the People can have no Power against him, unless he committeth something, by which he may cease to be *King*; for then he himself *abdicates* his Kingship, and becomes a *private Man*; and by this means the People being made *free*, that Right returns to them, which they had before the King was made: But there are but few Facts of that Nature, which can produce such Effects. And I cannot, when I think of it, find more than *two Cases*, in which a King doth *ipso facto* make himself *no King*, and thereby depriveth himself of all Honour, Regal Dignity and Power; (which also *Winzernus* takes notice of.)" One of these is, if he destroys his *Kingdom*, and then give us the Examples of *Nero* and *Caligula*, as I have already done; and next proceeds to this purpose, that when any King designs, and doth seriously endeavour "to put this in practice, he casts off all care and desire of governing; and therefore thereby loses his Empire over his Subjects, as a Lord of a Servant loses his Dominion over him, by giving up all Care, and Government of him." And of this Opinion likewise are * *Grotius* and Puffendorf †, the two best, and most learned Writers on this Subject. Who do not think it "inconsistent with the Rules of the Gospel, for Subjects to resist the King, if with a *hostile Mind* he seeks the *Destruction* of his People; for, says the former, the Will of commanding and destroying cannot consist together: And therefore he who professes himself an *Enemy* of the whole People does thereby *abdicate* the Kingdom; but that can scarce seem to happen in a King in his right Wits, and who commands only one Kingdom. But if he commands more Kingdoms, it may so happen, that he would destroy the People of one Nation to gratify the other, that he may *there make Colonies of them*." And this, I suppose, *Grotius* spoke in relation to the King of *Spain*, who (they say) had declared, that if he overcame the *Dutch*, then in Arms against him, he would sell the People for Slaves into *America*, and people the Country with *Spaniards*.

M. You very much mistake me, if you think, by *Imperial*, I meant the *Roman* Laws, but only the *common Laws* of *Sovereignty*, which, though they destroy no Man's natural, or civil Rights, yet both grant, and confirm unto the legal Sovereign, in every Government, the *Essential Rights* of *Sovereignty*, of which I take *Non-resistance*, not only for Wrath, but Conscience sake, to be one of the chief. And therefore it were much better to venture the utmost that a *Tyrant* can do towards his People by destroying them, than to give the least inlet to Rebellion, by supposing the People may in any case whatsoever resist their Prince. For granting the worst that may happen, that a Prince once in a thousand Years should be so wicked and malicious, as to go about to destroy his People, yet he could scarce find Means and Hands enough to bring it about: And admit he should destroy, by his *mercenary Forces*, thirty or forty thousand of them, it were better *all these* should perish, than that the Nation should be involved in *Civil War*, and the Prince's Person and Government destroyed by *Resistance*. And therefore in all Governments whatsoever, whether *Monarchies* or *Commonwealths*, there must be an *absolute Trust* placed by the People in one, or more Persons, which Trust they can neither recall when they will, nor yet resist upon the Non-performance of it. And therefore it is a Mistake, when you affirm with those Authors you have quoted, that a King, or other Supreme Powers, can ever lose their Right, by going about to destroy the People, much less when they only think their Liberties in danger; and I have several Reasons to give you for my Assertion.

As

* Lib. 1. c. 4.

6 7. 11.

† Lib. 7. c. 8.

§ 6. 7.

As first, from the *common Notion* of a *Trust*; for what is more generally understood by trusting another, than that we lodge our Concerns with him, and put them out of our Disposal? When I trust a Man with my Life, or Fortune, all Men agree, that I put it in his Power to deprive me of both: For to deliver any Property to another, with a Power of Revocation, is to trust him (as we say) no farther than we can see him. He that can recover a Sum of Money he hath deposited, when he pleases, to speak properly, hath it still in his Custody, and trusts his Friend no more than he doth his own Coffers; and therefore, if we consult our own Thoughts, we shall find, that a *Trust* naturally implies an *entire Reliance* upon the Conduct and Integrity of another, which makes us resign up our Liberty or Estate to his Management, imagining them safer in his Hands, than in our own. In short, a *Trust*, where there is no third Person to judge of the Performance, (as in these Facts between Subjects, and Sovereign, there is not) I say, such a *Trust* includes a *Translation* of a *Right*, and in respect of the Irrevocableness of it, is in the Nature of a Gift. So that there seems only to be this difference between them, that a *Gift* ought to respect the *Benefit* of the *Receiver*, whereas a *Trust* is generally made for the *Advantage* of him who conveyed it. T. J. R. p. 6.

And in every civil Society, or Government, under Heaven, that doth not depend upon another, there must be an *absolute* and *uncontroulable Power* fixed somewhere, which may *irresistibly* dispose of the Lives, Estates and Persons of the Subjects within that civil Society, or Government. For if every Man be left at Liberty to dispose of his own Estate and Person, as he pleases himself, then can he promise himself no Protection, but what his own natural Force will afford him; and that will certainly be overpowered at one time or other by others. Without this *Trust* there can be no Justice administred within the civil Society; for if every particular Man may be Judge in his own Case, the Right will certainly be asserted on both sides, tho' it really can be but in one: No Malefactor will ever condemn himself, nor submit to Justice, if he can, and may resist; and if a War happen, every Man will be for saving his own Goods from the Expence, as his own Person from the Danger of it; and the Consequence must be, that that *Civil Society* must perish either by *internal Disorders*, or *external Force*. B. D. E. p. 8.

Therefore this Power is, and must be in one Person, or Body of Men in every Civil Society, and is also *indivisible*: For supposing that it should be divided in the same Civil Society into two, or more Parts; as between two Men, and two Senates, or Councils, without any dependance upon each other, or any third Power, the Consequence must needs be, that they differing, and opposing one another, and having no lawful Power fixed in either of them to oblige the other to submit, must have recourse to Force and Arms: So that this Civil Society can never rest 'till this Supreme Sovereign Power be reduced again into one. And if you suppose this *Power* of *judging*, and resisting in the *People*, or Multitude, the matter is *ten times worse*; that being a blind, and heady Monster, easily provoked upon slight Occasions, commonly judging false, even in its own Concerns, and as implacable in its Rage, as unsatiable in its Revenge. Id. pag. 9.

To conclude: Whether this Supreme Power be in a single Person, or in a few, or in all, where ever it is lodged, none must oppose, none must resist it; nor can any Man assure himself of more Justice, or better Usage from a *Senate*, or a *Multitude*, than from a *Prince*, or *single Person*. So that this Inconvenience of being liable to have our Lives sometimes taken away, our Persons injured, and our Estates oppress'd by the evil Management of our Governors, is one of those humane Miseries, that, by the Corruption of Men's Nature from the Fall, took Possession of the World, and can never be purged out of it 'till the final Conflagration. And therefore the Advice of *Cerialis* in *Tacitus* is always to be remembered, That "Tyrants and evil Princes are to be born with, as immoderate Rains, "and unkind Seasons, and amends may be made by a better Successor:" Since Resistance will not cure, but only inflame the Distemper.

F. You have made a long Speech, wherein I see you have heaped together all that *Wit* or *Interest* can produce on the behalf of *Tyranny*; though I must confess, I did not expect to find you, of any Man, so zealous an Advocate for it. But I forgive it, as long as I really believe, that only a mistaken *Conscience*, and not any private Interest, prompts you to it. But that I may take your Speech to Pieces in order to answer it: In the *first place*, as to what you say concerning a *Trust*, I think you are under a very great Mistake. For no Man, either in a Civil State,

State, or in that of Nature, ever yet so trusted another, as that, if he abused his Trust, he had not reserved to himself a *Right of Appeal*. Under all Civil Governments this is notorious, since it is one of the main Businesses of *Supreme Courts of Justice*, upon *Complaints*, or *Appeals*, of *Breaches of Trust*, to call the *Trustees* to an *Account*, and force them to make *Restitution* for the Wrongs they have done. And whereas you say, that in the State of Nature, where there is no third Person to judge of the Performance, such a Trust includes a Translation of Right (as in these Facts between Subjects and Sovereigns:) This is likewise a Mistake, though it be true, that in that State, if I trust a Man with my Life and Fortune, I put it in his Power to deprive me of both; and that this Trust naturally implies a Reliance upon the Conduct and Integrity of another, which makes me resign my Liberty, or Estate, to his Management; yet doth it not therefore follow, but that upon the abuse of this Trust, I may have a Remedy against him, who thus breaks this Trust I have so reposed in him. And when there is no third Person to judge between me and my *Trustee*, I myself am the sole Judge of the Wrong he doth me; and may not only turn him out of his Trust, if I find he abuses it, but may also force him to make me Satisfaction for the Wrong he hath done: So that, if in the State of Nature I trust a Man with a Bag of Silver to keep for me; if he either imbezels, or runs away with it, I may certainly force him to make me *Restitution*, or else enter into a State of War with him 'till he do: And where there is no common Power over us to whom we can Appeal, this Difference can no way be decided but by the Sword. And therefore no Trust (as in those mutual Facts between Subjects and Sovereigns) can be irrevocable, or include a perfect Translation of a Right; and no Trust can ever be supposed to be given but with this tacit Condition, that the Trustee doth not abuse it. And you yourself have made a sufficient Difference between a Trust, and an absolute Gift; but granting that a Gift respects the benefit of the Receiver, whereas a Trust is for the Advantage of him who conveys it. From whence it must necessarily follow, that if this Trust be for his Advantage, he hath still an Interest in the thing trusted; and consequently may call the Trustee to an Account in the State of Nature, and upon Satisfaction denied, appeal to God himself by *Battel*, or *Combat*. So that if the *Supreme Powers* are but Trustees of the People, they may be resisted, when by going about to destroy them they break their Trust.

But as for the other part of your Argument, that in all Civil Governments under Heaven, there must be an absolute and uncontrollable Power fixed somewhere, that may irresistibly dispose of the Lives, Persons, &c. of the Subjects. This, tho' it seems a better Argument than the former, yet is all one in effect; for the Question is still, *Whether the People ever reposed such an absolute Power in their Supreme Magistrates, or not?* I grant indeed, that as far as they act as the Nature of Civil Power requires, they are not by any means to be resisted. But the Question still is, *Whether, when a Prince makes War upon the People, or goeth about to destroy them, there is then any Civil Power in being; and whether the Government be not already dissolved, since the main Ends of Government, viz. the Good and Preservation of the Subjects, are quite destroyed.* And now pray tell me which is most suitable to that prime Law of Nature, the Endeavour of the Good and Happiness of Mankind, that a whole Nation should be enslaved, or destroyed by the boundless Will of a Tyrant, or that Rulers should be sometimes resisted when they grow intolerably Tyrannical, and abuse their Power, to the total Destruction of the Lives and Properties of their Subjects. So then, if such an absolute Arbitrary Power in Princes, or States, can never consist with the main Ends of Civil Society, the Peace and Happiness of the Subjects, it is plain, that whenever they are reduced to such a State, they will look upon themselves as again in the State of Nature: Nor would they have ever quitted their natural Freedom, and tied themselves up from providing for the Security of their Lives and Properties, by such means as they might before have justly exercised, had it not been to obtain these Ends with much greater Certainty by entering into Civil Society, and by stated Rules of Right and Wrong, to secure their Lives and Properties with their future Peace and Quiet, by surer means, than they could hope for in the meer State of Nature.

For it cannot be supposed that the People would ever confer such an arbitrary unlimited Power on one Man, or many, over their Lives and Estates, that they

might take them away without any just cause; for this were to put themselves into a worse Condition than the *meer State of Nature*, wherein they had a Liberty to defend their just Right against the Injuries of others, and were upon equal terms of Force to maintain it, whether invaded by a single Man, or many in a Combination: Whereas by supposing they have thus given up themselves to the *absolute Arbitrary Power and Will* of a single Person, they have wholly *disarmed* themselves, and only *armed* him to make a Prey of them whenever he pleases; he being in a much worse Condition that is exposed to the *Arbitrary Power* of one Man who hath the Command of 100000 Men, than he that is exposed to the *Arbitrary Power* of 100000 single Men, no Body being secure that his Will who hath such Command, is better than that of other Men, tho' his Force be 100000 times stronger.

To conclude, granting a *Supreme Power* to be plac'd somewhere, either in a single Person, or in many, yet it can by no means be *absolutely Arbitrary and Irresistible* over the Lives and Fortunes of the People; for their *Authority* being (as I have already proved in the former Conference) no more than that Power which God hath granted to every particular Head of a Family, and other Freemen at their own disposal, for the security of their own Persons, and the common Good of those whom God hath intrusted to their Charge, they cannot confer upon the *Supreme Magistrate* any more Power than what God hath conferred upon them before, and and so can be no more than *those Persons* had in the *State of Nature*, before they enter'd into Society, and before they gave up their Power to these *Supreme Magistrates*, viz. that only which God had before trusted them withal. Now (according to your own Principles) *no Man* is trusted by God in the *State of Nature* with an *absolute Power* over his own Life, much less to *destroy* or *take away* the Life or Property of another, and therefore cannot convey any such Power to those he would entrust with it. So then if a Man cannot subject himself to the *Arbitrary Power* of another, neither hath he in the *State of Nature* such an *Arbitrary Power* over the Life, Liberty or Possessions of another, but only as much as the Law of Nature gave him for the preservation of himself, and the common Good of Mankind; this is all he doth, or can give up to the *Commonwealth*, so that if it can have no more than this, its *Power*, in the utmost bounds of it, is still *limited* to the *publick Good* of the *Civil Society*.

All which, if duly considered, the rest of your weaker Arguments are easily answered: For supposing but one Prince in 1000 Years so *wicked* as to go about to *destroy* his People, it will then, whenever it happens, be as much their *Right* to *defend* themselves, as if it were to happen every Year. And tho' you assert he could scarce find Means or Hands to bring it about; yet that makes nothing to the purpose; for if he hath *no Right* to *destroy* 30 or 40000 of the Subjects (as you suppose he may by his *Mercenary Forces*) then that 30 or 40000 may *defend* themselves if they can: For when once a Prince hath thus enter'd into a *State of War* with his People, who can tell when or where it will end, or can assure himself that he shall not be the next Man that shall be *destroyed*? And it is very pleasant that you allow the Prince this Power of *Murdering* to *avoid Civil War*; as if there could be no War begun unless there be Fighting on both sides; whereas Mr. *Hobbs* himself acknowledges, the very assaulting or setting upon any Man, to be entering into a State of War with him: And sure, I think, to fall upon the People without Cause, and killing 30 or 40000 of them, is entering into a State of War, or else nothing is: And therefore you mistake the Question, when you argue from the *Indivisibility* of the *Supreme Power* that it must not be *resisted*; for the Question is not here, whether it be *divisible* or not, but whether it be not *absolutely dissolved* by thus entering into a *State of War* with the People, whom all Civil Magistrates are supposed to protect when they assume the Government.

Nor doth this give any countenance to Malefactors or other single Persons, to rise in Arms and defend themselves against the *Supreme Powers*, when they have offended against the Laws, or that they think themselves injured by the undue execution of them; since such *Abuses of Power* cannot suddenly, or upon every slight occasion, *disturb* the Government. And in the case of *Malefactors*, the *Supreme Power* is still sure to have all the rest of the People on its side, for their own Security: And in case of some *Murders* or *Oppressions* committed by such *Supreme Magistrates* on the Lives or Estates of some private Persons, tho' I suppose that even such private Men have a Right in the *State of Nature* to *defend* their Lives, and to

recover

recover by *Force*, what by *unjust Force* is taken from them; yet this *Right* must still give place to the publick Peace and Safety of the *Commonwealth*, whereof they are Members, which must not be disturbed for the sake of a *few*: And of this the *Ibid p. 429.* People themselves are so sensible, that it is almost as impossible for a few *oppressed Men* to disturb the Government, where the *Body of the People* do not think themselves concerned in it, as for a *raving Mad-man* or *heady Malecontent* to overturn a *well settled State*; the People being as little apt to follow the one as the other. So on the other side, whenever the People are once convinced that their *Governors*, instead of *protecting*, go about to *destroy* them, it is as impossible for any Man to persuade them not to take up *Arms* and defend themselves against them, if they are able to make *sufficient Resistance*. And therefore tho' I so far agree with you, that some Oppressions and Violences may be practised in all *Civil Governments* whatsoever, since such Abuses will continue as long as Men are Men; yet doth it not therefore follow that the *Supreme Powers* must always be born withal and never resisted, no not when they go about to destroy the whole Body of the People.

M. But pray tell me, is it not a very mischievous and unjust thing, that *Subjects* should be both *Judges* and *Parties* too in their own Case; since they may pretend that the King goeth about to destroy or enslave them, when really he does not design any such thing; and would not this bring all things into *Anarchy* and *Confusion*? I shewed you the fatal Consequences of this at the beginning, but you have not yet thought fit to answer them.

F. I beg your Pardon, Sir, I have been so taken up with answering the *main Arguments* that you have proposed against this *Right of Resistance*, that I have not had time to consider this Objection, which is but a Consequence thereof: And therefore in the first place give me leave to ask you this Question; Suppose you were Master of a separate Family in the *Indies*, and a Neighbouring Prince or Cacik of the *Indians* should come to kill you, or to drive you out of your Plantation, might you not *defend* your self, because you are both *Judge* and *Party* too in your own Case? Or suppose you should so far abuse this Power of *Self-defence*, as to pretend this Neighbouring Prince was coming to assault you, when he really was not, and should therefore (to prevent it) set upon him first, and murder him and his Followers; must your *Abuse* of this *Right*, which you have by the *Law of Nature*, be a sufficient Argument, that neither you, nor any Man else in the *State of Nature*, should ever for the future exercise this *Right*? so neither will the *Abuse* of these *Rights* be a sufficient Argument against the *Right of Self-defence* against the *Supreme Powers*.

M. I grant indeed they are not in the *State of Nature*, but it is much otherwise after People are entered into a *Civil Society*, or *Commonwealth*, and that upon your own Principles; for then they have given up all that *Equality*, which you suppose between Men in the *State of Nature*: For supposing what you affirm should be true, That *Civil Government* at first began from the whole Body, or major part of the People's making over *all their Right* of Governing themselves to one Person, or more, upon *Conditions* of being *protected* in their Lives and Estates; they must likewise make over *all their Right* of Judging for themselves what means are necessary for their *common Good* and Preservation; after which *transferring* of their Power, they can never have any *Right* to meet again in a Body, either by themselves or their Representatives, to judge of these *Breaches*, or the Transgressions of those *Conditions* which they at first proposed and *agreed upon* with such Princes or Governors. And when the *People* come once to multiply into a *Nation*, it is absolutely impossible for them ever to *meet* altogether again, and give their *Judgment* of the good or evil Consequence of the Monarchs Actions, or to come to any *Resolution* upon them; so that their Opinion can never afterwards be known, otherwise than by the *Murmurs of particular Persons*, which none can certainly know neither, unless they could speak with every *individual Person* of that Kingdom, which is impossible. But if you will say, this *Oppression* needs not be known by *Words* or *Votes*, but *Actions*, viz. by the People's actual taking up Arms, this must either be by the *whole People* all together at once, or at least, the *major part* of them, or else of some particular Bodies of Men, much less than the whole, or major part: Now the *whole*, or *major part* of a People of a Nation to rise and *take up Arms* all at once, as one Man, is *morally impossible*: And if any part less than this *whole* or *major part*, (as suppose a *whole Province* or *City*) every such Party or Body of Men so rising, must be guilty of *Rebellion*, and disturbing the publick Peace of the

Common-

Commonwealth, as being but private single Persons, which you your self granted and condemn'd as unlawful. And therefore I desire to know, who shall judge when this Body or major Part of the People are thus assaulted, so that they may justly defend themselves? But indeed this Licence of taking up Arms is not only unpracticable, but unreasonable too; for it supposes, that after the People have given up all the Power they had of judging what was bad or good for the Publick, they have this Power still left in them, which would make them at once both *Subjects* and *Sovereigns*, which is a *Contradiction*.

F. Had you been pleas'd but better to have observed what I said the last time I spoke, a great part of this Objection had been saved. For I there expressly asserted, that the Security of Men's Lives, Liberties and Estates, being the *main Ends* for which Men entred at first into *Civil Society*, and likewise desired to continue in it, as being the only means why *Civil Government* is to be preferred before the *State of Nature*, the People neither *did* or *can* give up their *Right of Judging*, when these are invaded or taken from them: And therefore you are very much mistaken, to believe that at the *Institution of Civil Society*, Men must have given up their *common Senses* and *Reason* too of judging when they are like to be *Murdered*, or made *Slaves* of, or their Fortunes unjustly taken from them, by those whom they have *ordained* to be their Governors: And I suppose you will not say, that they thereby acquire a Power of *altering* the *Nature* of things, or of making War, Slavery or Beggary the means of procuring the Welfare and Happiness of the People, *any more* than they can *enact* that Hunger or Diseases should conduce to the preservation of any Man's Life: And therefore as the Judgment of these things was obvious and natural to every Man's Senses and Understanding in the *State of Nature*, so it is as plain, they never intended wholly to give up all their Right of Judging concerning their own Preservation and Happiness, and all means necessarily tending thereunto, but only in such Cases, and concerning such Matters as are *beyond* the Power, or *above* the Knowledge of every *ordinary private Subject*. Thus in a Disease, tho' I give up my self to the Skill and Judgment of a *Physician*, yet I do it not so *absolutely*, but that I still reserve to my self a *Right of judging*, whether he gives me *Poyson* instead of a *Puqe*. And if Princes or Supreme Magistrates were thus *absolutely invested* with an *Arbitrary Power* of doing whatsoever they pleas'd with the Lives, Liberties and Estates of the People, they would then be in a much worse Condition under *Civil Government*, than they were in the *State of Nature*, as I have already proved; and therefore there is no need of any such *general Meetings* or *Assemblies of the whole Body*, or *Representatives* of the People, to judge when these *Fundamental Conditions* of all Government are notoriously violated and broken: Since it will be apparent to every Man's Sense and Reason that is thus assaulted or injured.

And as for the other part of your *Objection*, how the People can know when the *whole Body* or *major Part* of them is thus assaulted or oppress'd; and being so assaulted or oppress'd, *what number* are necessary to justify this *Resistance*? To this important Question I thus answer, that if such a War or Assault be made upon such a *considerable part* of the People, as may justify this *Resistance* to be much better for the good of the Commonwealth, than that *so many* People should be destroyed; *Resistance* certainly is then lawful: And the reason why every particular Person, when unjustly assaulted by his Prince's *Order*, or his *Estate* taken away by his *unjust Edicts* or *Decrees*, ought not to make any *publick Disturbance*, only to *save* the one, or *recover* the other, I have given you before, *viz.* because the *publick Peace* is to be preferred before that of any *private Person*: Yet even then, such a *private Person* may very well defend himself, if *unjustly* assaulted by *Affassinates*, whom the Prince, or other Supreme Magistrates, shall send to *take away* his Life without any just Cause or legal Tryal; tho' I grant he may not solicit others to rise with him, and take his Part, or help him to defend his Life or Estate; yet (as a Reverend Dignitary of our Church very well observed) *No Man can want Authority to defend his Life against him who hath no Authority to take it away*. But much more, when this Assault or Oppression is either made upon the whole People in general, or upon so considerable a Part or Member thereof, as the *Commonwealth* could not well *subsist* without if it were *destroyed*: In all such Cases, I suppose the People thus assaulted or oppress'd, have a *sufficient Right* to defend their Lives, and free themselves from that Slavery and Oppression they lie under: And thus the People of *Rome* might very well have justified their *Resistance* of *Nero's Incendiaries*,

S. C. R. p.
59.

when he sent to burn the City, tho' they had been his own Guards. We read likewise in the *Hist. August.* that the Emperor *Caracalla*, the People happening to laugh at him (for his *Folly*) in playing the Gladiator in his *Circus Maximus*, sent his Guards to kill them: So likewise in *Herodian*, that upon another supposed Affront, he sent his *Pretorian Bands* to murder most of the Inhabitants of *Alexandria*, who came out to meet him with a *solemn Procession*. And I suppose no rational Man will deny, but that if the Citizens of *Rome* or *Alexandria* had had Arms in their Hands, they might have lawfully defended their Lives against these Murdering Guards; for I think it was much better that those should be destroyed who were the Aggressors, than that so vast a Body of Innocent People should be made Sacrifices to the unreasonable Passion or Revenge of a Cruel Tyrant. So that when the Oppression or Violence to Men's Liberties and Properties is general and notorious, and affect the whole Body of the People; I do then suppose, that any Part of them that are sufficient to defend themselves, may do it till they can find Assistance, either from the rest of the People, or else from some Foreign Prince or State, who will vindicate their Cause and come in to their Assistance. And thus we read the Town of *Brill* in *Zealand*, under the Conduct of the Count of *Mark*, first revolted from the Tyranny of the Duke of *Alva*; which Example was afterwards (tho' not immediately) followed by most of the Cities of *Holland* and *Zealand*; and the Courage and Resolution of this Count, as also of the Citizens of this Town, is highly commended by the Historians of that Time, for so nobly venturing their Lives and Fortunes to redeem their Country from that Slavery it then lay under, till at last they were relieved and assisted by Queen *Elizabeth*, to whom the *United Provinces* owe that Freedom they now enjoy.

17. *Meterani*
Histor.

M. I shall not now dispute with you, what Right the States of the *United Provinces* might have to resist the Tyranny of the Duke of *Alva*, then Governor for the King of *Spain*; since *Grotius*, and most Writers which are not of the *Spanish Faction*, suppose that King to have had a Conditional Right of governing those Provinces, according to their own Laws and Privileges, from the very first Institution of the Government; and therefore not being an absolute Monarch over them, he might well be resisted upon the Breach of those Conditions. But this is not the Case now in hand, since we are now discoursing of absolute Monarchies or Commonwealths, who being invested with the Supreme Power by the Consent of the People (as you suppose) and therefore may have by their Consents (whether forced or voluntary, it matters not) according to your own Principles, a supreme unaccountable Power over them: And in the first place, I can shew you how a Man may make over all the Power he hath in his own Person irrevocably to another; as when a Man sells or grants himself for a Slave to another by his own Consent; who when he hath once put himself into this Condition, his Master hath an absolute Property in his Person, and an indefeasible Right for ever to his Service; so that notwithstanding all the cruel, harsh and unreasonable Usage he may meet with from his Master, he can never regain his Freedom without the Consent of his Lord: And this I take to be an uncontested Truth, agreed on by the *Laws of Nations*, and established by the

Pet. Ep. 1. c.
2. v. 18.

Law of God. Thus *St. Peter* chargeth those who are in this State of Servitude, to be subject to their Masters with all Fear, not only to the Good and Gentle, but also to the Froward. So likewise *St. Paul*, in both his Epistles to the *Ephesians* and *Colossians*, commands Servants to be Obedient to them that are their Masters according to the *Flesh*, &c. And that this particularly respects Slaves, appears by the 8th Verse of the 6th Chapter of the former of these Epistles.

Ep. 6. v. 5
Col. 3. 22.

So that if a Man may thus make himself a Slave or perpetual Servant to another by his own Consent, I cannot see any Reason why a whole Nation may not do the same, and deliver themselves up to one Man or more, to be governed and treated both for their Lives, Liberties, and Fortunes at his or their Discretion; so that tho' he may perhaps abuse this Power to the severest Tyranny or Oppression; yet have they no Right to shake off this Yoke, or to resist him, since their Lives and Fortunes are wholly at his Disposal by their own Act and Consent. And that whole Nations may justly surrender themselves for Slaves or absolute Subjects, I can give you two Examples approved of by God in the Scriptures: The first is that of the *Egyptians*, who, when they had sold all their Goods, and Lands, to *Pharaoh* for Bread to keep themselves alive in the seven Years of Famine we read of in *Genesis*, you'll find they were afterwards such absolute Servants or Slaves to *Pharaoh*,
That

That as for the People, he removed them to Cities, from one end of the Borders of Egypt, Gen. 47. 21, even to the other end thereof; only the Land of the Priests bought he not, &c. The other is that of the Gibeonites, of whom we read that they accepted of their Lives from Joshua and the Elders of Israel; tho' on the condition of the greatest Slavery, rather than they would venture to be destroyed: So that if *absolute Monarchy* were not lawful, but *contrary* to God's Will and Institution, most of the greatest Kingdoms in the World would be governed *contrary* to the *Laws of God and Nature*; and the *Subjects* of all the Kingdoms from *France* to *China* (not reckoning those of *Africa*) might immediately, if they were able, *rebel* against their Monarchs, and set up what sort of Government they thought fit, since none of the Subjects in those Kingdoms hold their Lives, Liberties or Estates by any other Tenure, than the good Will or Pleasure of the Monarch, who may take away all, or any of them, as often as he pleases to do it, and that without *any right* of *Resistance* in all or any of their *Subjects*, let them use them never so *severely*.

F. I cannot deny, but what you say is so far true, that *one Man*, or *many* together, may grant or sell themselves for *Slaves* by their *own Consent*; and that the Persons who thus make over themselves, have afterwards no *Right* or *Property* in any thing more than a bare *Subsistence*; yet that *Servitude* is not by the *Law of Nature*, but only brought in by *Custom*, or the *Law of Nations*, as all Writers agree, and is so far lawful, because it tends to the good and preservation of Mankind, that *Prisoners* taken in *War* should rather be kept as *Slaves* than immediately slain, or that Men compell'd by extreme necessity should sell themselves, or their Children, rather than both should perish; and therefore it is no wonder that the *Apostles*, who were not sent to alter the State of things in the World, or to entrench upon any Man's *Civil Rights*, should command *Servants* or *Slaves* to be subject to their Masters, tho' *Unbelievers*: Yet doth it not therefore follow, that when Men are *forced* to give themselves thus up to the Power of another, they likewise give him an *absolute Right* over their Lives, so as that their Masters may take them away whenever they please; for that was more than they ever had over themselves; nor doth God confer any such Power upon Masters: And therefore if the Master hath no such *absolute Right* or *Property* in the Persons of his *Slaves*, as he hath in his *Sheep* or *Cattle*; I see no reason why even *Slaves*, if their Masters go about to take away their Lives for no other Cause but to satisfy their own Humour or Passion, may not (if they cannot otherwise escape) *resist* their Masters, and save their Lives if they can: For all Writers agree, that if a Master doth so *inhumanly* abuse his *Slave*, that he can no longer endure it without danger of his Life, he may in that Case lawfully *run away* and escape from him; and why he may not as well *resist* him to save his Life, when his Master goeth about thus *unjustly* and without any cause to take it away, I can see no reason to the contrary; since it was only for the *saving* his Life, that such a Man could ever be supposed to yield himself a *Slave* to another; and which Condition being broken on the Master's part, the *Servant* is again in the *State of Nature*, and the *Relation* of *Master* and *Servant* so far *ceases*, or is at least suspended during that *Violence*.

This being the State of *particular Men*, I cannot think that God hath put *whole Nations* in a *worse Condition*; nor can I imagine that any *whole Nation*, unless urged by some *extreme necessity*, would ever give up themselves so *absolutely* for *Slaves*, as not to have any Right to defend their own Lives, or a Property in any thing they can enjoy; and if ever they could be supposed to have done so, I think I may boldly affirm, that such a Nation are not *Subjects*, but *Slaves*; and the Prince not a *Monarch* or *Civil Governor*, but only a *Lord* of a *great Family*, or *Master* of a publick *Work-house*.

For I take the *difference* between *Subjects* or *Slaves*, and *Princes* and *Masters* of Families to consist in this, that the Power of a *Prince* is chiefly ordained for the good and preservation of his *Subjects*, tho' I grant *his own* may likewise be included in it as an Encouragement and Reward for his *Labour*; yet not as the principal End of his *Institution*; whereas in a Family of *Slaves*, they are chiefly ordained for his Profit or Benefit that maintains them; but their *Happiness* and *Preservation* is only accidental, and as it may conduce to that. The *main End* also of *Civil Government* is to institute and maintain a *distinct Property* in Men's Estates, and which the Prince or Commonwealth can have *no Right* to take away. And therefore tho' I grant that in those *Despotick Monarchies* you mention, the Monarchs do

exercise an *absolute Arbitrary Power* over the Lives, Liberties and Estates of their Subjects ; yet that this is by *Divine Right* or *Institution* I utterly deny, or that it was always so in all of them from the beginning ; for most of those *Empires* you mention can *no otherwise* subsist, than by a constant maintaining vast *Standing Armies* or *Guards* to keep their Subjects in Obedience.

Nor can any Governments be of *Divine Institution*, which are exercised with a *sole Respect* to the personal Power and Grandeur of the Prince, rather than the good and preservation of the People : So that if you will but survey the Accounts that Travellers give us of those *Eastern* parts of the World, you will find that there are no known *settled Laws* or *Properties* in those Countries, except at the *Arbitrary Will* of the Monarch or his Viceroy : And thus all those rich and fruitful Countries of *Egypt* and *Asia*, which formerly flourished in all Arts, Knowledge and Civility, and abounded in Multitudes of People, are now, in most places, reduced to meer *Desarts*, and do not breed a *tenth part* of that Number of People as they did in former Ages ; which proceeds from no other Cause but the *Cruelty* and *Injustice* of the Government, quite different from what it was in the time of the *Roman* Emperors, who, tho' I confess they were in some sense *absolute* too, yet governed by, and were obliged to observe *known Laws* ; and the People had a *settled Property* in their Estates, which the Prince had no *Right* to take away : I shall not enquire how all these *Monarchs* came to be so *Arbitrary* at first, and thus to *abuse* their *Power* ; but the Generality or Antiquity of this *Abuse* can be no more a *Plea* for its *Right*, than that because *Idolatry* was generally practised throughout the World within three or four hundred Years after the *Flood*, till three or above four hundred Years after *Christ* ; therefore *Idolatry* was the *true* and *ancient Religion* of the World.

Now, tho' I will not condemn this sort of *Government*, where the Subjects enjoy no *settled Property* in Lands or Goods as *absolutely unlawful*, and directly *contrary* to the *Laws* of *God* or *Nature* : Yet in those Kingdoms and Commonwealths, where *Civil* or *Hereditary Property* is once introduced, I think it is not lawful, nor indeed in the power of the Prince or Commonwealth to *destroy* or *take it away* : And therefore if the *Roman* Emperors should have endeavoured, by any *Laws* or *Edicts* of their own making, to have *destroyed* all *Civil* or *Hereditary Property* in Lands and Goods, and to have *reduced* all the Estates of their Subjects into their own *Possession* ; I think they might have been *lawfully* disobeyed and resisted by the People, since they went about to destroy one great *End* of *Civil Government*, viz. the instituting and maintaining of *Civil Property*.

To conclude, I freely grant that in *all Countries* which are governed either by *absolute Monarchies* or *Commonwealths*, the *Sovereignty* is so fully in one Person or Body of Men, that it hath *no other Bounds* or *Limits* under *God* but its *own Will* or *Commands*, provided they do not apparently tend to the *absolute Ruin* and *Destruction* of the People ; for that being *inconsistent* with the *Notion* or *End* of governing them, they are, and ever will be *Judges* of it : And therefore even amongst the *Turks* and *Tartars* themselves, if they should once find their Prince go about *wilfully* to destroy them, or sell them for *Slaves* ; you would soon find (notwithstanding this *servile Subjection*) that they would quickly be rid of them, as the *Jannizaries* have served their Emperors of late Years for far less Faults.

M. I cannot deny but you have spoken reasonably enough on this Subject ; and perhaps if you had *restrained* this *Power of Resistance* only to such Cases where the Prince or Monarch makes *open War* upon his People, or doth otherwise *actually* go about to *destroy* them, it might have been a tolerable Doctrine that they may *lawfully resist* the *Forces* he shall send against them ; but this is a Case that so seldom happens (if ever at all) that it can never be supposed, and no Prince, *unless he were Mad*, can be guilty of it ; and therefore whenever he acts thus, I think he may *not only be lawfully resisted*, but *tied up for a Madman* : But this is seldom or never the Case between *Monarchs* and their *People*, for most of the *Rebellions* and *Insurrections* that I have ever read of, or observed in the World, have not proceeded from any necessity that the People had to *rise up in Arms* and *rebel* against their *Supreme Magistrates*, because their Lives or Estates were assaulted, or in danger to be taken away ; but for the most part they arose either from the *too great Cruelty* or *Severity* of the *Supreme Power* towards some particular *private Men*, who by themselves, and their Friends and Relations, have gone about to revenge those Injuries that they supposed had been done them : And of this all Histories are so full, that

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I need give no particular Instances of them ; all which *Abuses* may be reduced to these Heads ; *First*, When a Prince doth commonly himself violate the *Chastities* of the Wives or Daughters of the Subjects, which tho' it hath been the *Ruin* of diverse Princes, yet is he able to do this only to some few particular Persons : And tho' if he should permit his *Soldiers* or *Officers* generally to do this without any *Punishment* ; yet even this can hardly, it ever, extend to all the Wives, Daughters or Women in a whole Country : And therefore both these Cases are to be born withal, according to your own Principles, since it doth not tend to the *Slavery* or *Destruction* of the People, I mean, as to their whole complexed Body. A *Second* is, when an *absolute* Prince or Monarch goeth about to alter the established Religion of his Country, and to introduce a different one by his own sole Authority, whilst the major part of the People continue of another Opinion. In this Case I suppose you will not affirm that the Subjects have a Right to resist their Prince for so doing : For then the *Romans* might justly have rebelled against *Constantine*, when he shut up the *Heathen Temples*, and forbade all publick Sacrifices to their Gods, and thereby made the *Christian Religion* the established Profession of the Empire.

F. But pray Sir give me leave to interrupt you a little ; might not *Constantine* have a Right to do this, because the *Christian Religion* is the only true one ; and that the *Idolatri* the *Romans* then practised, was against the *Law of Nature* ?

M. Whatever weight there may be in this Answer, yet you have no reason to put this Question now, since you have already, viz. at our first Conference, asserted that an *Erroneous* Conscience puts Men under an Obligation to follow it, during the time they are under this ignorance of the Truth : And therefore if the *Roman Emperors* had not a Right to do this by their own Authority, without any Resistance ; the Subjects, whilst they believed the Worship of their God to be thereby destroyed, might, nay ought to have resisted the Emperor, rather than to have suffered him to have altered the ancient Religion of the Empire, and to have brought in another, which they look'd upon as an upstart ; and it is very natural for Men to do so, since nothing ought to be more dear to them than the *Worship* and *Honour* of God.

F. I do not desire at present to embark my self in this tedious and troublesome Dispute about the Authority of the *Supreme Powers* in Matters of Religion ; and therefore I shall say no more to it at present. But if your Assertion be true, that an *absolute Monarch* may set up what Religion he pleases, without being resisted by the Subjects, whom I suppose to be of another Persuasion, it will then follow, that if the *French King* or *Emperor of Muscovy* should turn *Mahometan*, and should set up that by *Superstition Force*, for the Publick and National Religion of the Country, tho' with the Destruction of all that should oppose it, none of their Subjects might resist them in so doing ; and if so, I desire you to consider what you have gained to Religion, by thus asserting such an unlimited Prerogative to all Monarchs. But laying aside this Dispute till another time, I pray go on to the rest of those Cases in which the People do take upon them to resist the *Supreme Powers*.

M. I shall comply with your desires ; and therefore a third Pretence of Subjects to rebel, is when the *Supreme Powers* shall think it necessary to levy upon their People more heavy and grievous Taxes and Impositions than the People are willing, or it may be, able to pay. Now if your Principle be true, that they may rise in Arms and resist the *Supreme Powers*, whenever they think themselves thus intolerably oppressed ; and if they shall be sole Judges of this Oppression, then all the *Rebellions* that ever were made in *England* or elsewhere, by reason of such excessive Tributes or Taxes, would be lawful ; which would be a perpetual ground of *Anarchy* and *Confusion* ; for private Subjects not being admitted into the *Privy Councils* of Princes or States, can never be supposed to understand whether the necessities of the *Commonwealth* may require them or not : And indeed the People do so often *repine* and *murmur* at the Government, when the publick Necessities require to impose greater Taxes or *Gabels* than they think they can well bear ; that the *Mobile* of any great City or Province, for Example, who think themselves thus oppressed beyond what they are able, or perhaps willing to bear, may rise in *Rebellion*, and throw off all Obedience to *Civil Authority* ; and they may have a very good Pretence for it, according to your own Principle, because they may look upon themselves as a very considerable, nay necessary part of the *Commonwealth*. And thus the common People of *Kent* might have justified their Rebellion in *Richard II's* Time under *Wat Tyler* and *Jack Straw* ; and the People of *Devonshire* and *Somersetshire* might like-

wise

wife have justified their *Insurrection* in *Henry VII's* Reign under *Flammock the Blacksmith*: And I could mention others of the like nature; but I forbear, because you may say they were upon account of *Religion*. And *Lastly*, This Principle might very well justify the *Insurrection* of the common People of *Naples*, under *Massinello*, which, besides the vast spoil it made upon the Goods and Palaces of the Nobility, ended at last (whatsoever they pretended at first to the contrary) in delivering up themselves to the King of *France*, who refusing to protect them, they were soon reduced to their former Obedience to the King of *Spain*.

In short, if the People should take upon them to *Resist* or *Rebel* whenever they thought themselves intolerably injured and oppressed in their Estates by immoderate *Taxes*, there would be no end of such *Rebellions*, especially considering the advantage which Wicked, Crafty and Ambitious Men would thereby take to excite the People to *rise* and *depose* their lawful Governors, and set up themselves in their room, upon pretence of better Government and greater Liberty; and how prone the common People have been to receive such *Impressions*, he is but meanly skill'd in antient and modern History, who is not convinced of it.

F. To answer this Objection before you proceed farther, my Opinion in short is, that tho' *Taxes* may often prove an Universal Damage, and a great Impoverishment to the Subjects; yet if they are such as may be born with less trouble than can follow from a *Civil War*, or the Change of the Government, there is no just or sufficient cause of *Resistance* of the Sovereign Magistrates Commands or Edicts concerning them. As for Example, such great *Taxes* as the Subjects pay, and perhaps may bear it well enough in *Holland* and other Countries, since there may be a necessity for such *Taxes*; and of this I grant the *Supreme Authority* of the Nation can be the only Judges; and how far this may extend I cannot positively determine; for suppose you should ask me, if the *Supreme Powers* should borrow all the ready Money the Subjects had, for the necessary uses of the State, so that they would give them *Leather* or *Brass Money* instead of it, to go at the same Value, for the necessary uses of *Commerce*; yet if they did not take away their Property in their Lands, Corn, or Living Stock, which are the necessary means of their Subsistence; I do not think it were a sufficient Cause to take up Arms against their Governors for so doing; because the Subjects cannot tell but that the necessities of the State (for their necessary defence against a Potent *Foreign Enemy*) may require it. And sure it is a much greater Evil to fall into a *Civil War*, or to be subdued by *Strangers*, than to part with their Money; since by such a War or Conquest, they might not only lose that Money, but also their Liberties and Estates.

Yet on the other side, I would not be understood to give the *Supreme Magistrates* a Power to invade the Properties and Estates of their Subjects to what degree they thought fit; for then they might tax them to that extremity as might force them to sell themselves and their Wives and Children for Slaves, or else being unable to pay, must be forced to run away and leave their Habitations (as the *Peasants* often do in *France*) whereby whole Villages, nay Towns, may become depopulated, as they are in divers parts of *Italy* and *Turkey*, by such extraordinary Severities; and therefore in *absolute Monarchies*, where there is no Nobility, Gentry nor Yeomen, who can claim any Property in their Estates, which with us make up the best and most considerable part of the People; and where the Government being wholly *Military*, is exercised over the People only by force of Arms; I doubt not but such a People, reduced to this Extremity, may not only quit the Country where they are thus intolerably oppress'd, but that if they are not of themselves strong enough to make *Resistance* and cast off this intolerable Yoke by Force, they may (if an occasion be offered) join with any Neighbouring Prince or State that will undertake their Quarrel; and upon this Account, I think we may very well justify the *Revolt* of the *Greek Christians* from the *Ottoman Yoke*, and putting themselves under the Protection of the *Venetians*, both in the *Morea* and other Places; and also upon the same Principles, I conceive the common People of *France*, who are reduced to the like Extremities, might also with a safe Conscience revolt from the present King, and put themselves under the Protection of the Prince of *Orange*, our now present Sovereign, or the States of *Holland*, if ever they should be successful enough to make any considerable *Invasion* upon that Kingdom.

And

And therefore I must confess, that there can be no certain and stated Rule set down, to what Proportion absolute Princes or Commonwealths may tax their Subjects; since in some Countries the People can better part with a Shilling than in others they can pay a Penny. And as I grant it must be left to the Mercy and Discretion of the Governors what Taxes to impose without thus ruining and destroying their People, as it is left to the Judgment of the Owner of the Beast, how much Burden it is able to bear: So if he, by laying too great a Weight, breaks the Back of his Horse or Beast, he not only hath the Loss, but makes himself the Laughing-stock of all his Neighbours. So that tho' I confess the People ought to have patience, and rather to suffer many Oppressions and Hardships, than to put themselves in this miserable *State of War*; yet there is a *Misfit* in all things, and the People may be so cruelly oppressed by Taxes, and other Impositions, as it is impossible for them longer to subsist, or provide Necessaries for themselves and their Families: And since you have already granted, that the People may judge when their Prince makes War upon them, and goeth actually about to destroy them by the Sword, I cannot see why they may not have the same Right of judging when they are like to be destroyed by Famine too. And who can be judge of this, but those who feel it?

But indeed it is morally impossible for the People to be mistaken in so plain a Case: For tho' this many-headed Beast (as you commonly call them) the People, cannot argue very subtilly of the future Consequences of things, yet they have a very nice and tender Sense of Feeling, and can very well tell, when they are so injured and oppressed, that they can bear it no longer: For then sure they may be allowed to have as much Care and Sense of their own Preservation, as *Camels* and *Dromedaries*, which (as Travellers relate) tho' they are taught by their Masters to kneel down, and to receive their Loads, which they will patiently endure as long as they are able to bear them; yet when once their Masters do over exceed that Weight, neither fair means nor foul can prevail upon them to rise, or they will throw off these Loads, if risen, that they feel will otherwise break their Backs. But I have discoursed long enough on this Head, and therefore if you have nothing more material to except against it, I pray proceed to the rest of the Causes that Subjects may, as you think, pretend to have to take up Arms against the Supreme Powers.

M. I have somewhat more to urge towards proving that this Liberty, which you allow the Subjects, wholly tends to *Anarchy* and *Confusion*; but I shall reserve it to the last, when I shall sum up all that I have farther to urge upon this Subject; and therefore I shall proceed to the other Pretences that Subjects in *absolute Monarchies* may make to *rebel*; and the next may be, that the *Monarch* looking upon his Subjects as his *Slaves*, may either use them so himself, or sell them to other Nations for that purpose, as *Monsieur Chardin* tells us, the King of *Mongrelia* often doth diverse of his People to raise Money. And tho' I will not be so ridiculous as to suppose that such a Monarch can sell away all his People at once, for then he should be left alone without any Subjects, and consequently become no King; yet in such Monarchies as diverse of the *Eastern* and *African* are at this Day, where (as you your self own) the People have no Settled or Hereditary Property in their Estates, the Monarch may dispose of their particular Persons as he thinks fit; I cannot see any reason why the Monarch may not in these Countries, without any blame, exert his Prerogative if he pleases, and take as many of his Subjects or their Children to serve him as Slaves, as he thinks necessary for his Service.

U. Sir Jo.
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And therefore whatsoever People or Nation have thus subjected themselves to the absolute Power or Dominion of one Man, they have no more right to regain their Natural Liberty, than I should have of taking away any thing by Force which I had before given or granted to another; for this sort of *Civil Servitude* is not so repugnant to Nature as some imagine; or that because Subjects were forced to consent to it for the avoiding of some greater Evil, they can afterwards have any right to shake it off again whenever they will: For tho' I grant that God hath not instituted any such Servitude; yet when once it is introduced in any Country, Men are not at Liberty to cast off the Yoke whenever they please, but to observe *St. Paul's Rule*, *If thou art a Servant, care not for it; but if thou art Free, chase it rather*; that is, *Freedom* is to be preferred before *Servitude* or *Subjection*. But where Providence hath made Men absolute Servants or Subjects, they are bound

bound to continue in that State, unless the *Supreme Powers* they are under think fit to release them from it; and therefore this can be no good Pretence under *absolute Monarchies* for Subjects to take up Arms against their Prince, for such a State of Liberty which they never enjoyed.

F. I shall not trouble my self to dispute what Right an *absolute Monarch* may have over the Persons of his People, in a Country where they have no Property nor written Laws, and where they look upon themselves as no better than Slaves to their Prince, and perhaps may take a Pride in it (as I have read the *Russians* do.) And therefore if they have so wholly submitted themselves, I grant what you assert is true, and that they have no Right to *Resist*, according to the old Saying, *Volenti non fit Injuria*. And yet even in these *Despotick Monarchies*, tho' the Prince may pick out here and there some of his Subjects to sell for Slaves, or else to use them as such himself; yet I do much question, if he should go about to make any considerable Number (as suppose to take 20 or 30000 all at once for Slaves) I say, I do much question whether these People would be so convinced of your Principles of *Passive Obedience* and *Non-resistance*, as to let their *Monarchs Guards* drive them into *Slavery*, like Sheep to the Market, but would, if they were able, make a *vigorous Resistance*, and knock their Drivers on the Head. Whether *Jure, vel Injuria*, I shall not dispute.

But for all this, even in *absolute Monarchies*, where the People have a settled legal Property in their Lands and Estates; and consequently where their Persons are Free, I doubt not, if their Princes should go about to make all his Subjects Slaves, but that they might lawfully *resist* him, or those he employs in so doing. And tho' it be true he could not make all his People Slaves at once; yet if he asserted it as a part of his *Royal Prerogative*, and also exercised it on particular Persons as often as he thought fit, or could, I doubt not but the People might make it a common Cause; since none can know whose Turn it may be next; for sure *Liberty from Servitude is as necessary to Man's Happiness and Well-being, as Life is to his Existence*; which would seem no great Benefit to those, who being *Born Free*, were reduced to *Slavery*; it being well said by the Poet, *Non est vivere, Sed valere vita*.

And tho' the *Roman Emperors* did exercise an *absolute Power* over their Subjects, yet I never read that they durst presume to make *Slaves* of *Free-born Romans*; nor indeed of any of those Nations they subdued; for they had too great a sense and love of *Liberty* themselves, ever to impose such a Yoke upon the People they *Conquered*, which was so destructive to the common Happiness and Preservation of Mankind. And I suppose if the *French Grand Seigneur*, as Absolute as he is, or pretends to be, should go about to sell his Subjects (especially the Nobility) for Slaves, all that the *Jesuits* (those Instruments of Slavery) could do, would not, I believe, be able to keep that People from rising against him. But if you have nothing farther to object against what I have now said, I pray proceed to the next Head, if you have any more Instances to make.

M. I am now come to the last Pretence that Subjects may make to Rebel, and that is, supposing the *Monarch* should at once, or by degrees, turn the Subjects out of their legal *Hereditary Properties* in their Estates; and of this you your self grant there can be no Dispute in those *Despotick Monarchies*, where there is no *Hereditary Property* allowed: And as for all other Governments, since you do own that all legal and civil Property in Lands did chiefly proceed, or at least is established by the civil Power, I cannot see why those Powers in any Kingdom (if they think it would conduce to the good of the *Commonwealth*) may not destroy this civil Property, and either make all Estates equal, or else ordain that they shall be enjoyed (as in all *absolute Monarchies*) at the Will of the Prince; since if the *Supreme Powers* are the Author of this Property, sure they may alter and abrogate it again as often as they think fit.

F. I shall not dispute with you concerning such Kingdoms where there is no civil Property yet instituted, or where the People do own themselves Slaves to the Prince; but if such a *Monarch* hath remitted any thing of this *Right*, and hath instituted a legal *Hereditary Property* in Estates; such a Law being once made, I do not think it is in the Prince's Power to revoke it, any more than it is for a Master to reduce his Slaves again to Servitude after he hath once set them free; since both Men's Liberties, or a settled or Hereditary Property in Estates, do equally conduce to the Happiness and Propagation of Mankind, and the Good of that
People

People or Nation wherein it is introduced : And I doubt not but *Pharaoh*, tho' he was Lord of all the Lands of *Egypt*, by the Grant of the *Egyptians*, yet might law fully have been resisted by them, if he had gone to take away those four fifth Parts of the Profit of the Lands which he had left them Free by his own Concession.

So that even in such *absolute Empires*, the Monarchs have Power to dispose of the Estates of the People only as far as the Compact or Concession at first made by them or their Predecessors do allow. And it is also not much otherwise, where the Subjects do not acknowledge their Estates as the Gift or Benefit of the *Supreme Powers* : And that may happen chiefly too ways, either *First*, When any *Free People*, under the Conduct of a Captain or Leader, created by themselves, have Conquered any new Territory and Habitation ; or else, *Secondly*, When divers Fathers or Masters of a Family, who had Estates of their own before, have agreed for their mutual Security, and the quiet enjoyment of what they were already possess'd of, to joyn together into one *Commonwealth*, under the Command of one or more Men ; or else of others that will bring their Estates, and joyn themselves to such a Government already Constituted, and will subject themselves to this *Supreme Power*, according to the Cohitions already agreed on amongst them. A *Third Case* may be, When an *Hereditary Property* in Land was establish'd before the *Monarchy* began, as in the *Roman Commonwealth*, this Property was establish'd before the Government was changed from a *Republick* to a *Monarchy* ; so that the People did not owe their Property to the Emperors Grant or Donation.

In the former Case, if such a *Free People* conquer a Country under the Conduct of a Captain or Leader ; tho' I grant such a Country may be assigned by him to all the People by Lot, or in proportion to the greater Merit or Service of his *Fellow Adventurers* or *Soldiers* (tho' it may seem that the Property of particular Men may have proceeded not from their own Right or Possession, but from the Assignment of their chief Captain or Leader) yet are not the Estates which such particular Men enjoy, to be look'd upon only as the meer Grace or Favour of such a Prince ; since most of those who followed him in this *Conquest* or *Expedition*, did it not as *Subjects*, but as *Volunteers*, and without whose assistance he could never have *Conquered* at all ; so that they thereby acquir'd to themselves a certain *Portion* or *Share* in the Land so conquered ; tho' for avoiding Dissentions and Quarrels amongst them, it was left to the disposal of this new Prince, as a publick *Trustee*, to distribute to each Person what Share he should have. But in the other Case, when Fathers or Masters of Families, before *Free* and possess of *Hereditary Estates*, do submit themselves to the Command of one Man Voluntarily or by Election, those Estates do much less depend upon the Will or Favour of that Prince. And therefore, if such a Prince should, without their Consents, go about to take away their Property in their Estates, he might very justly be resisted by them, since a quiet enjoyment of these in Peace and Safety, was one of the chief reasons that made them chuse him for their Prince, and was certainly one of the Original Compacts of the Government.

And that in *absolute Monarchies*, where the Subjects were not Slaves, they look'd upon themselves to have such a settled Property in their Persons and Estates by Compact, that *Seneca* boldly pronounced, *Errat, si quis existimat tutum esse sibi Regem, ubi nihil a Rege tutum est ; Securitas Securitate mutua paciscenda est.* And Mr. *Hobbs* himself, as much a Friend as he was to the *Arbitrary Power* of Monarchs, and an Enemy to the *Natural Rights* of Subjects, yet is forced in his *Leviathan* to confess, that the Riches, Power and Honour of a Monarch, arise only from the Riches, Strength and Reputation of his Subjects ; for no King can be Rich, nor Glorious, nor Secure, whose Subjects are either poor or contemptible. Tho' how this Riches and Strength of Subjects can consist with that *absolute Power* which he gives his Sovereign over the Persons and Estates of his Subjects, I cannot understand ; since he will not allow of any Compacts or Conditions between him and them. But that their *Propriety* may very well consist with the Power of the Prince, *Seneca* shews us ; *Jure Civili* (says he) *omnia Regis sunt, & tamen illa quorum ad Regem pertinet universa possessio in singulos Dominos descripta sunt, & unaquaque res habet possessorem suum. Itaque dare Regi, & donum, & mancipium & pecuniam possumus, nec donare illi de suo dicimur. Ad Reges enim Potestas omnium pertinet, ad singulos Proprietas.* And the Earl of *Clarendon*, in his Survey of the *Leviathan*, makes this excellent Remark upon this Passage of

Seneca : And that Prince who thinks his Power so great, that his Subjects have nothing to give him, will be very unhappy, if he hath ever need of their Hands or their Hearts. So that notwithstanding this universal Power, or supereminent Dominion of the Emperor over all things, which *Seneca* there supposes ; yet if he should have gone about to have invaded all Mens Properties, and reduced all Mens Estates into the publick Treasury, I doubt not but he would soon have had not only his own Legions, but the whole Empire about his Ears. And tho' I have heard that the *French King* doth by his exorbitant Taxes and Gabels raise more Money out of the Kingdom of *France*, and the Territories annexed to it, than the *Ottoman Emperor* doth out of that vast Empire (of which he hath the sole Propriety of the Lands in himself) yet if the *French King* should endeavour, by the Power of his Standing Army, to take away all Mens Hereditary Properties in their Estates, and make them all to be holden at Will, I doubt not but he would not only be opposed by his Subjects, and perhaps ruined in the Attempt ; but also, if he should succeed in it, would be so far from being the richer, or more powerful, that he would become the poorer and weaker, when he had done : Since no Man would take the pains to build, till, or improve their Estates, any more than they do in *Turkey*, when they were not sure how soon they might be turned out of them, or at least could hold them no longer than for their Lives, or a few Years. So prevalent a thing is this empty Shadow and bare Name of Property that is now left in *France* (being often charged with Taxes to above half the Value of the Estates) to encourage the People to beautify, cultivate, and improve a Country abounding with all those Riches that Nature or Art can produce.

And to let you see I am not at all partial, I think I may safely affirm the same of the *Legislative Power* in this Kingdom ; so that, if it should happen (which tho' highly improbable, yet it is not impossible) that the Lords and Commons assembled in Parliament should so far abuse the Trust reposed in them, as to give up all their Civil Properties in their Estates into the King's hands, to be disposed of as he should think fit, and that the King should thereupon go about to turn all the People out of their Estates, I doubt not but they might in that case resist the King, if he went to do it by force, notwithstanding this Act of Parliament : And my Reason is, that a settled Hereditary Property in Estates being as antient, if not more, than Parliaments themselves in this Nation, must consequently be a fundamental Law of the Government, and so cannot be altered by its Representatives. For tho' it be true, the People have given them a Power to dispose of what Part of their Estates they should think fit, yet did they not make it absolute, to extend either to their Liberties (I mean in respect of Slavery) or their whole Properties in their Estates. And if the King may be resisted, if he invade them by his own sole Authority, the Reason would be the same why he might be also resisted, tho' back'd by an Act of Parliament ; since the taking away of Civil Property would prove as destructive to the People's Liberties and Happiness in the one case, as in the other, and as great an Abuse of the Trust reposed in them that were designed to protect it.

M. I cannot except against your Distinction between those Governments, where a Property in Estates did precede the Institution of the Government it self ; for there, I grant, that such a Property may be a fundamental Law of the Government ; but in those Monarchies that have begun by Conquest, under the Command of a King or absolute Prince over an Army of his own Subjects, in that case, upon the Conquest of a Kingdom or foreign Nation, not only the Prey or Goods of the Vanquished, but also their Estates, were forfeited to the Conqueror, who had a Right either to retain them for himself, or else to distribute them as Rewards amongst his Officers and Soldiers. And that this is the Right of all Conquerors, whether Commonwealths or Monarchs, by the *Law of Nations*, and was exercised amongst the antient *Greeks* and *Romans*, as well as other Nations, I refer you to your own Authors, *Grotius* and *Puffendorf*. And therefore, since it appears from History, that most of the Kingdoms now in *Europe*, and particularly this of *England*, began from Conquest, under the Conduct of their first *Saxon Kings* ; if then whatsoever was so conquered was acquired for them, and they alone had a Property in it, it will necessarily follow, that all Estates which the Subjects of all sorts now enjoy, must have proceeded from their Grants or Concessions : And hence it is, that not only in *England*, but also in *Scotland* and *France*, they are all held either mediately or immediately of the King, as being at first all derived from him. And

we read in the antient Laws of *Scotland*, that the King had the whole Property of the Country till the Reign of *Malcolm Canmor*, who, as we read in the antient Histories of that Country, granted all the Lands in *Scotland* to his Nobility and Gentry, according to that old Maxim in their Law, *Rex distribuit totam terram Scotia hominibus suis*. And therefore if *Hereditary Property* in Estates were only from the Gift and Bounty of our Kings, without any fundamental Contract between them and their Subjects, as you suppose; cannot see any reason (granting the worst that can happen, which is highly improbable) if the Kings of this, or of our neighbouring Nations, should go about by force to destroy and take away this *Hereditary Property* they now enjoy, that the People should have any Right to resist them; but that it would be not only *Ingratitude*, but *Rebellion* so to do. For tho' I own that Kings were guilty of Perjury in the sight of God, if they did it; yet that being an Offence only against God, the Subjects could have no more Right to resist, than Sons in the State of Nature had to resist their Father, if he should go about to take away those Estates, which he had before bestowed upon them.

And as for what you say concerning the *Roman Commonwealth*, I grant indeed, that the Government of the *People* did there precede that of the *Emperor*; yet if you please to remember, *Monarchy* was the first and most antient Government of that People: And I doubt not but all the Property the *Romans* had in their Estates, tho' they proceeded from Conquest of their Arms, yet it was wholly owing to the Grace and Bounty of their first Kings; and when, upon the Expulsion of *Tarquin*, the Supreme Power became divided between the Senate and People, the Property of all the Lands that were conquered, devolved upon them, who often divided them to particular private Men, as they thought fit; tho', I confess, the not dividing of these Lands amongst the Common People, was afterwards the Cause of great Tumults and Commotions among them: Yet notwithstanding the Senate and Nobility still maintained their Power, and to the last refused to make a Division of those Lands they had formerly conquered. So that the *Roman Emperors* succeeding in the Power of the Senate and People, they were likewise restored, as it were *ex postliminio*, to the Prerogatives of the first Kings, and consequently, as *Seneca* himself confesses in the place you have quoted, tho' the *particular Propriety* of Estates was in private Men, yet you see he grants, the *universal Possession* or *Dominion* of them was in the King or Emperor, from whom they were originally derived.

I would not be thought to speak thus, as if I were an Enemy to Mens Liberties and Properties, or that I either fear or desire any Change in them, from what we now enjoy; but since I think it a thing morally impossible to alter them, and that therefore no King will be so ill advised, as to go about to seize them into his own hands; but only by way of discourse, supposing the worst that can happen, I think we are not only obliged in Conscience, but also that it were much better for the common Peace, that the King should take all we have, than that we should involve the Nation in Civil War and Confusion, and our Consciences under the Guilt of a mortal Sin, by such Resistance and Rebellion.

F. I am very sorry to see, that by your Principles all the free Nations of *Europe* lie at the Mercy of any Prince, to be made as errant Slaves as any are in *Turkey*, whenever their Monarch pleases, or that they think that they can make more of their People by taking away their Estates and Liberties, than by letting them enjoy them, which would render *Civil Property* in all Kingdoms like private Estates, which every Man may let to his Tenants at Will, upon a Rack Rent, or for Years or Lives, as they shall think fit. But I think I may very well differ from you in both your Propositions: For, omitting any farther Discourse of those *Eastern Monarchies*, where I grant the People are little better than Slaves; yet I think I can easily prove, out of the antient Histories of those Kingdoms that are now in *Europe*, that tho' most of them began by *Conquest*, yet was it not under the Conduct of *absolute Monarchs*, but under such Princes or Leaders, whose Followers (as I said before at our last Meeting) were not properly *Subjects* nor *Mercenaries*, but *Volunteers*, under those that commanded them; and therefore would never have gone out of their own Countries, but to advantage themselves, and to enjoy those Privileges, which their Countrymen had at home; of which Liberty in their Persons, and Property in their Estates, were the chief: And this is apparent in the *French Nation*, who, whatever their Condition may be now, yet antiently called themselves *Franks*, in opposition to that Servitude, which they supposed their

neighbouring Nations amongst the *Germans* were in to the *Romans* at that time. And tho' I grant, that these Nations of the *Goths*, *Vandals*, *Franks* and *Saxons*, from whom most of the Kingdoms in *Europe* are now derived, might vest or intrust the Lands of the Countries they had conquered in them whom they had made their Kings, yet still it was with this Trust, that retaining a sufficient Part to sustain the Royal Dignity, they should distribute the rest to all their Officers and Soldiers, according to each Man's Valour or Merit: And if they had refused to have done this, can any Man believe, that so free a People, as the antient Histories relate them to have been, would ever have suffered it, *without pulling down these Kings they had set up*, which was then very common among them for much slighter Occasions? And to go no higher than *William*, (whom you call the *Conqueror*) can any Man believe, that if he had retained all the Lands of *England* to himself, not only his own *Norman* Lords and Soldiers, but these of other foreign Nations, who assisted him in this Expedition, would ever have suffered him to have reigned in quiet over them, if instead of a *limited King* he had set himself up for an *absolute Monarch*, and have granted them no Estates but at his Will and Pleasure; which would have reduced the Conqueror and the Conquered to the same Condition?

But as for your Example of *Malcolm Canmor*, I cannot believe that the Kings of *Scotland* were ever possessed of the whole *Hereditary Property* of all the Lands in that Kingdom, so as that no Man had any settled Interest in them before that time; and therefore I must beg your pardon, if I think this Passage in their Histories to be very suspicious, if not false. But I speak this only by the by, and I reserve what I have more to say on this Head for another time, wherein I doubt not but to be able to shew you, as evidently as can be done after so many Ages, that all the Kingdoms in *Europe*, which are descended from the *Gothick* or *German* Nations, commenced at first from Compact with their first Kings, and have thereby an unalterable Right in their Lives, Liberties and Estates; and if so, have likewise Right to defend them, if generally and universally invaded by their Princes.

But granting, for the present, what you have asserted to be true, that all this Property, which is now in *Europe*, proceeded wholly from the Grants and Concessions of Princes; yet will it not follow, that by the Law of Nature or Nations, if any King should go about generally or at once to invade the Liberties and Properties of their People, they might not lawfully be resisted: For, as I said before, even a *Slave*, when manumitted by his Patron, may lawfully defend his Liberty against him, if he goeth about to take it away, and reduce him again into Slavery. So likewise, in the same State of Nature, if a Prince freely grant his Subjects a settled and hereditary Property in their Estates, they have likewise a Right to defend them against him or any other, that would endeavour by force to take them away: For he that in this State grants any thing to another, grants him likewise a Right to keep it, whether the Donor will or not, or else it were indeed *δωρον ἀδωρον*: For he that in the State of Nature grants another Man any thing to be possessed or enjoyed only as long as he himself, or his Heirs, shall think fit, doth in effect grant him as good as nothing; since he may alter his Mind to morrow, and demand it again, and take it away the very next day. So that if you will grant, that Subjects have such a Right to their Estates, as that the Prince cannot without manifest Violence or Injustice take them away, you must likewise grant, that they have also a Right to defend them.

T. T. G. 179. But I suppose you will not deny that Right, that all Men have to their Civil Properties in all our *European* Kingdoms and Commonwealths, tho' never so absolute: But your Objection against the Subjects defending it by force, if it be invaded, is, that it may cause Rebellion and Confusion. I grant indeed, it may sometimes occasion Civil Wars or intestine Commotions, if the People, finding their Liberties and Properties notoriously invaded, shall oppose the unjust Violence of those who, contrary to the Trust reposed in them, do thus violently invade them: Therefore (forsooth) if this Doctrine be allowed, it may prove destructive to the Peace of Kingdoms and Commonwealths, and consequently to the Good and Happiness of Mankind: But methinks you might as well have argued, that honest Men might not resist Robbers or Pirates, because it may occasion Disorder and Bloodshed: If any Mischief come in such cases, sure it is not to be charged upon him who defend his own Right, but on him that invades another's. If the innocent

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honest Man must quit all he hath, for quietness sake, to him who will lay violent hands upon it, I desire it may be considered, what a kind of Peace there will be in the World, which would consist only in Violence and Rapine, and which would be maintained only for the benefit of publick Robbers and Oppressors.

M. But pray, do you make no difference between a Knot of Thieves and Robbers, and the Civil Government of a Monarch or Commonwealth, which I suppose may very well be maintain'd without any Hereditary Property in Lands, as you have granted? And it were much better, in my mind, to forego these outward things, than renit the Civil Government, which is the *Ordinance of God*, as you your self acknowledge.

E. I think the best way to end this Controversy, will be, to desire you to give a Definition of Civil Government, that we may know what we mean by it; therefore pray will you give me an easy and plain Definition of it?

M. Well, Sir, I shall comply with your Desires: I then take Civil Government to be an Authority conferred by God on one or more Persons, to make Laws for the Benefit and Protection of the Subjects, and to inflict such Punishments for their Transgression, as they shall think fit, and by the Subjects Obedience and Assistance to protect them against foreign Enemies, and also to appoint what Share of Civil Property each Person in that Commonwealth shall enjoy.

E. Sir, tho' your Definition be somewhat lame, yet I am pretty well contented with it, only I will shew you by and by wherein it is deficient. The first, and therefore chiefest Branch or Office of Civil Magistrates, is, to make Laws for the Benefit and Protection of the Subjects: Is it then a Branch of this Power, to send Soldiers or Dragoons to take away their Liberties, Lives or Estates? This sure is directly contrary to their Duty, and that Trust which God hath conferred upon them. Let us go on to the next Branch, the Infliction of Punishments for the Transgression of such Laws: Is this a Part of Civil Government, not only to send their Soldiers and Officers to take away their Subjects Lives and Estates, but also to let the most capital Offenders or Robbers pass unpunish'd, when they have done? If you maintain these to be the Prerogatives of Civil Government, or that to be Civil Government where these things are commonly practis'd, you may, even with Mr. Hobbs, set the great Leviathan free from all Obligation to his Subjects, any further than he shall think fit for his own Interest, and make them always in a State of Nature, that is, (as he supposes) of War with them; and then pray tell me, whether such a State can be the Ordinance of God, or not? But to come to the last Branch of your Definition (and in which alone I think it deficient) the appointing what Share of Property each Person in that Commonwealth shall enjoy: Tho' I grant it may be the Prerogative of Civil Governments to appoint this at first, yet are they likewise obliged to maintain this Property, when it is once instituted; and the People have as much Right to it as any King can have to his Crown, viz. the Civil Law of that Country, or Consent of the whole Nation: And therefore if, according to King James the First's Rule, a King of a settled (or limited) Kingdom will break all the Laws thereof, and degenerate into a Tyrant, unless such Tyrant be the Ordinance of God, he may certainly be so far oppos'd: For what can Pirates or Robbers do more than his Officers and Guards by his Commission? The former can but murder Men, ravish their Wives, burn their Houses, and take away their Estates; and if the latter may do so too, pray where is the difference? Or what Satisfaction is it to me, that I am ruined by one Man having the King's Commission, or by another that ruins me without it? since I am sure God hath given the one no more Authority to do it than the other. If then this unlimited Power be neither conferred by God nor Man upon the Civil Magistrates, I would fain know any Reason why Thieves and Pirates may be resisted, but their Instruments may not, that do the same things? And why, when Civil Authority exceeds its utmost bounds, the State of Nature or Self-defence may not take place; since the Civil Government is as much dissolved by such violent Actions, as if a foreign Enemy had broke in, and conquered the Country?

But to answer your Query, whether I think a Civil Government may not be where there is no settled Property in Estates, and whether the Eastern Monarchies are not Civil Governments? To this I answer, that I have Aristotle on my side, who not without Reason affirms, that the Government of one Man, where there is no Civil Property, and where all Men are Slaves, is not Civil Government, but

but that of a Master of a great Family over his Slaves: And tho' I grant, that they may have some shew of Civil Government among them, as in a Plantation, where one of the Slaves may complain to the Master against another, for any Injury or Wrong done him; yet is not this Property Civil Government, any more than that of the Master of a separate Family, who looks upon himself as absolute Lord over all his Slaves, allowed him by God, only for his Benefit and Grandeur, and not he instituted (as all Civil Powers are) for the Good and Preservation of the Subjects.

M. But methinks you seem herein to condemn the Government of God's own People the Jews, which no doubt was an *Absolute Monarchy*, and that restrained by no Laws, except what God had expressly prescribed them: And yet you see, notwithstanding *Samuel* told them, that their Kings should take away their *Fields and their Vineyards*, and give them to his Servants, and take their Sons, and Daughters to be his Servants or Slaves; yet God leaves them no Power to resist them for so doing; but all the Remedy left them is, that they should cry out in that Day, because of the King which they had chosen, and the Lord would not hear them; that is, there was no Remedy left them but Patience.

F. I have already given you my Sense of that Place, and I shall speak more particularly to it, when you shall come to those Texts of Scripture, that you said you would produce for *Absolute Subjection* and *Non-resistance*: And therefore at present I shall only here shew you what the Earl of *Clarendon*, in the above mentioned Survey of the *Leviathan*, cap. 19. hath very prudently as well as honestly said concerning this Text. "They who will deduce the Extent of the absolute and unlimited Power of Kings from that Declaration by *Samuel*, which indeed seems to leave neither Property nor Liberty to their Subjects, and could be only intended by *Samuel* to terrify them from that mutinous and seditious Clamour; as it hath no Foundation from any other Part of Scripture, nor was ever practised or exercised by any good King, who succeeded over them, and was blessed and approved by God; so when those State Empiricks (of what Degree or Quality soever) will take upon them to prescribe a new Diet and Exercise to Sovereign Princes, and invite them to assume new Powers and Prerogatives over the People, by the Precepts, Warrants, and Prescriptions of the Scriptures; they should not presume to make the Sacred Writ subject to their own private Fancies. So likewise in a Leaf or two before he speaks much to the same purpose: "That what *Samuel* had said was rather to terrify them from pursuing their foolish Demands, than to constitute such a Prerogative as the Kings should use, whom God would appoint to go in and out before them; which methinks is very manifest, in that the worst Kings that ever reigned over them never challenged or assumed those Prerogatives: Nor did the People conceive themselves liable to those Impositions, as appears by the Application they made to *Rehoboam*, upon the Death of *Solomon*, that he would abate some of that Rigor his Father had exercised towards them; the rough Rejection of which Request, contrary to the Advice of his wisest Counsellors, cost him the greater Part of his Dominions: And when *Rehoboam* would by Arms have reduc'd them to Obedience, God would not suffer him, because he had been in the fault himself." From whence you may conclude, that this Great Man did not think *all Resistance unlawful*, in case of general and intolerable Oppressions.

M. I shall give you my Opinion farther of what you have now said, when you have told me more plainly in what Cases you allow *Resistance* of the *Supreme Powers*, and in what not. For till you have been more clear in this matter, I cannot tell what Judgment to make of your Tenets.

F. I thank you for putting me upon so fair a Method: And therefore that you may not mistake me, and suppose that I would go about to allow *Subjects* to resist, and take up Arms against the Supreme Power, upon any less Occasion than an *absolute Necessity*, and apparent Danger of being destroyed, and ruined in their Lives, Liberties, and Estates: First therefore, considering that the Corruption of Humane Nature is such, that no sort of Government whatsoever can continue long, without some Inconveniences and Mischiefs to particular Men; nor that any Man, either *Prince* or *Subject*, was ever Master of such perfect Wisdom and Goodness, as always to perform his Duty so exactly, as never to offend: I do in the first place grant, that it would be both *undutiful*, as well as *unjust*, for Subjects to rebel against their Prince for his personal Failings or Vices: *Undutiful*, since the Prince

Prince may be oftentimes an ill Man in his private Capacity, and yet a good Governor, in respect of the Publick; and also *unjust*, since neither do we ourselves exactly perform our Duties towards the Supreme Powers (or to one another) as we ought: And therefore it is highly reasonable for Subjects to endure, and pass by the personal *Faults* or *Failings* of Princes, in consideration of that Protection and Security in their Lives and Fortunes, which they do enjoy under them; since it hath been found by Experience with how great a Slaughter of People, and how great a Confusion, and Danger of the whole Commonwealth, evil Princes have been resisted, or turn'd out of their Thrones. And therefore, I grant the *private Injuries* of Princes are to be pass'd over, in consideration of that *great Charge* they undergo; and for those greater Benefits we receive from their Government; but chiefly for the publick Peace of the Commonwealth, or Civil Society. And therefore, I own it is very well said by that Master in Politicks, Tacitus, *That the ill Humours, or Dispositions of Kings are to be born withal, and that often Mutations of Governments are of dangerous Consequence.* And he wisely introduces Cerialles speaking to this purpose to the Rebellious Treverns: *That they ought to bear with the Luxury and Avarice of Rulers, as they do with immoderate Showers, and other unnatural Evils; since there will be Vices whilst there are Men, yet neither are these continual, but are often recompenced by the Intervention of better.*

But I will now particularize those Cases wherein I do absolutely disallow, and disclaim all Resistance in Subjects against the Supreme Powers.

1. I deny all Resistance to Subjects against their Princes, or Supreme Magistrates, in all such Actions, or Prerogatives, which are absolutely necessary to the Exercise of their Supreme Power, *viz.* of protecting and defending their People; as also against those who are commission'd by them for the Execution of such Powers.

2. I condemn all Rebellion against Princes, or States, meerly on the Score of Religion, or because they are not of the Religion of their People, or Subjects, if there be no positive Law extant, disabling or forbidding Princes, or other Magistrates of different Religions than that of their People, from being admitted to the Throne, or Government.

3. I look upon it as Rebellion in the People, tumultuously to rise up in Arms to alter, or reform the Religion of the Nation, or Kingdom, already established by Law, without the Consent of the Legislators.

4. I disclaim all Resistance, or Self-defence in Subjects, upon the account that the free, or publick Exercise of that Religion they profess, is not allowed them by the Legislative Power of the Kingdom, or Nation, provided that such Supreme Powers do not forbid, or hinder the People professing such a different Religion, to sell, or transport their Estates, and Persons into any other Country where they please.

5. I deny Resistance to Subjects against their Princes or Governors upon pretence of any personal Vices; as because they are wicked, atheistical, cruel, lustful, or debauched, provided they generally protect their Subjects in their Lives, Liberties and Properties.

6. I deny this Right of Resistance to any particular Person less than the whole Body, or major part of the People; or at least such a considerable Portion of a Nation, as are able, when assaulted or oppressed in their Lives, Liberties or Estates, to constitute a distinct, and entire Kingdom or Commonwealth of themselves.

7. I look upon it as wicked, and rebellious for any private Subjects to assassinate, murder or imprison their Monarch, or other Supreme Governor, since no private Person whatever ought to lay violent Hands upon his Prince, whose Person ought to be sacred, and in no wise to be violated, unless he put off the Character of a Prince, and actually make War upon his People. But if in this Case he happen to be resisted, and perish in the Attempt, he falls not as a Prince, but as a common Enemy, by breaking the Original Compact with his People, and entering into a State of War against them: As a Father who unjustly makes War upon his Children, may be, (as I have already proved at our first Conference) resisted by them in the State of Nature.

But

But as for all other Grievances, or Oppressions, if they are of that Nature as may ruin the whole *Commonwealth*, yet not suddenly, but after some time, and often repeated, I cannot allow such Grievances, or Oppressions, as a sufficient Cause of *Resistance*: For as on the one hand, there is no Inconvenience so small but in process of Time it may turn to the Ruin of the *Commonwealth*, if it be often repeated, and excessively multiplied; so on the other side, length of Time produces so great Changes, that the Nature of these Encroachments or Injuries are not sufficient to justify *Resistance*, and the Breach of that Peace and Unity in a *Commonwealth*, which must necessarily follow by entering into a State of War.

To conclude: I do not in any case whatever allow of *Resistance*, but only in these three necessary ones: When the Lives, Liberties, or Estates of the whole People, or the greatest part of them, are either actually invaded, or else taken away; and when they are reduced into so bad a Condition, that a State of War is to be preferred before such a Peace; and lastly, when the end of Civil Government, being no longer to be obtained by it, the *Commonwealth* may be look'd upon as dissolved.

M. Though you have been pretty long in treating of this Matter, yet I did not think it tedious; since I confess you have given me honestly enough (and so far I agree with you) all those Cases wherein you say it is unlawful for Subjects to take up Arms, or resist the Supreme Powers: But I wonder you have not added one Case more, which divers Authors, that are high enough against *Non-resistance* in other things, do yet allow to be a sufficient Cause of taking up Arms, and resisting their Prince: And that is, when he actually hath, or goeth about to *alienate*, or make over his Dominion and Subjects to some foreign Prince or State.

F. I am not ignorant of what you say, but I thought it not worth speaking of; because in absolute *Monarchies* (which we are now treating of) if such Kingdoms are Patrimonial, and that the Monarch hath such an absolute Dominion over his Subjects, as neither to let them enjoy any Liberty in their Persons, nor Properties in their Estates, but at his Pleasure, I cannot see any Reason why such a Prince may not alienate his Dominion over such a Kingdom and People, as well as any private Man may his Property in his Estate: Nor have the People any cause to be concerned at it, since they can then likewise be but Slaves, and enjoy nothing but at their Prince's Pleasure, as they did before; so that whether he, or a Stranger govern them, it is all one as to their Circumstances. But yet under such Governments as are not absolute, where the People enjoy their personal Liberties and Properties in their Estates, the Case may be much otherwise; since they may not be sure, that the foreign Prince, to whom their own Monarch, or other Supreme Powers, hath assigned them, will maintain their Liberties and Properties as the former did. And therefore not being Slaves before, they cannot be *alienated* without their own Consents, and consequently they may take up Arms, and defend themselves if they are able; unless the Prince or State, to whom they are so alienated, will give them the like Assurance to preserve their Lives, Liberties and Properties, as their former Governors did. And therefore I do conceive the People of the Islands of *Cyprus* and *Candy* might very well have refused to become Subjects to the *Grand Seignior*, in case the *Venetians* should have sold or alien'd their Dominion over them, before he had actually conquer'd them. But in limited, or Hereditary Kingdoms, which are so by their Fundamental Constitution, I suppose, the Prince cannot, upon any account whatsoever, make over his Dominions to a foreign Prince without the Consent of his People, and next Heir. And therefore (granting the Story to be true), I doubt not but the People of this Kingdom might very well have opposed King *John*, if he had gone about to have subjected it to the Dominion of the Emperor of *Morocco*, upon Condition that he would assist him with an Army of *Moors* to subdue his *Barons*, and *Nobility*, then in Arms against him.

M. I confess it is not worth while to dispute about that which so seldom happens, and is indeed almost impossible to be put in practice; and therefore I shall not much oppose you in what you have said upon this Case; yet, that I may be as good as my Word, and give you my Judgment concerning what you have lately said, I must freely tell you, that as it may happen, that a Prince or State may sometimes abuse their Power, so as to take away the Liberties and Estates

of all their Subjects, as you have set forth, (and which I confess is a very great Mischief) yet upon second Thoughts, I think it were much better that this Inconvenience should be suffered, rather than the worse Mischief of leaving Subjects to be the sole Judges, when their Liberties and Estates are invaded, or like to be taken away; nay, every private Subject would be first Judge of it, or else the whole People could never come to pass their Judgment upon it, which would leave too great a Latitude for turbulent and rebellious Spirits to make Disturbances in Kingdoms and Commonwealths; especially, if there be any small Grievances on the Subjects; especially too, if they touch at those things they account their Hereditary Liberties and Properties. These, (though never so small) if the People are suffered to be their own Judges, (as you make them to be in their own Case) will soon be aggravated, and blown up to intolerable Oppressions of, and Invasions upon their Liberties and Properties, when indeed they are not. This is a pernicious Doctrine; for it will be a perpetual Cause of Quarrels, Civil Wars, and Rebellions, which would turn all Commonwealths, tho' never so well constituted, into Anarchy and Confusion. So that as you have stated this Question, you have broached a Principle highly destructive to all Civil Government: For if all, or any of the People, may resist or rebel (call it what you please) whenever they think themselves oppressed in their Liberties and Estates, *L. O.* this is for them only to be obedient, when they think themselves well governed; but stubborn and rebellious, when they believe they are not; which would be to make all Government precarious and conditional, and the People not only Parties, but Judges, and Executioners too in their own Case, how far these Conditions are observed on the Governor's part; and then the Regularity or Irregularity of the Administration will no longer be the Question, but the Validity of the Power to command. And there wants no more to dissolve such a Government, than for *Dick*, or *Tom*, and every *Rascal of the Mobile* to say, This or That is destructive to the People's Liberties and Properties, and therefore an insupportable Grievance and Oppression. And if you will once allow any number of the People, though never so many, to judge this, or that Law, or Order of the Government, not to be for their Good, and that they may likewise resist and right themselves by Arms, whenever they thus fancy, they will quickly come to say, that the Government it self is not for their Good neither. And upon this ground all the *Rebellions*, raised by an incensed, and mistaken Multitude against the Government in all Ages, may easily be justified; and *Wat. Tyler*, and *Masaniello* shall be so far from being Rebels, that they may pass in future Ages for Heroes, and noble Assertors of the People's Liberties. And I hope you will believe, I do not speak this out of any Liking or Approbation of Tyranny; or that I desire that Princes should stretch their Power to the utmost, to invade their Subjects Liberties or Estates; but only to let you see, how far your Principles may serve the Pretences of wicked Men to set whole Kingdoms together by the Ears, whenever they find the People so far discontented with the Government, as to believe their malicious and wicked Insinuations: Of all which those long and cruel Civil Wars, and Rebellions, which for several Years tormented, and almost ruined these three Kingdoms, are too late, and sad Examples.

F. I confess, Sir, you have made a very pathetick Speech, and exerted, I suppose, the utmost Strength of your Reason and Eloquence on this Subject; for you have made the Consequences of this Principle, *viz. (That the People may judge when their Liberties and Properties are invaded)* to seem very dreadful. But after all, it is no more than what you have urged in great part already: And the main Strength of your Argument lies here, that if the People should take upon them but once to judge when they were notoriously injured or oppress'd, and thereupon take Arms to right themselves; they would soon make bold to put this Power into Use and Practice, when they had no occasion for it at all, or at least not sufficient to make any open Insult. But to shew you that there is no need of such an infallible Judge, as you suppose, to be necessary in a Commonwealth, any more than there is in the Church; pray tell me, Sir, would it not have been very convenient, if Christ had appointed an *infallible Judge* (be it the *Pope*, or *General Council*, or both together) to decide all Controversies in Religion, and to whose Judgment all People ought to submit?

M. I cannot deny, but it would have been a very ready way to end all Disputes about Religion ; but since God hath not thought fit to appoint any such Judge, it were very great Presumption in us to set up one to please our Humour, since such a one could have no Infallibility, unless it were given him from above.

F. You judge very well ; and doth it not therefore follow, that since there is no such infallible Judge, all Men ought to judge for themselves of the Truth of their Religion ; and also in the Christian Religion, what Doctrines are agreeable to the Word of God, and what not ? And yet you see that from the ill use of this Liberty have sprung all the different Sects and Heresies in the World. Does it therefore follow, that Men must not make use of this Liberty, because they may abuse it ? So likewise, must Subjects judge in no case whatsoever, when the Supreme Power tyrannizes over them beyond what they are able to bear ? And must they never resist, or endeavour to cast off this insupportable Yoke, because they may happen one time or other to be wanton, and believe themselves oppress'd when indeed they are not ?

M. I grant your Parallel would have somewhat in it, were the Consequences of every Man's judging for himself in Matters of Religion as fatal to the Peace and Happiness of Mankind, as your Doctrine of the Subjects judging when it is fit for them to resist the Supreme Powers : For I do not at all debar them from the Right of judging when they are oppress'd, or ill used by them, for that may very well consist with the Publick Peace ; but I utterly disallow all manner of *Resistance by Force*, because it tends, not only to dissolve all Civil Government, but to disturb the common Peace and Safety of Mankind.

F. Notwithstanding your Distinction, the Parallel will hold in both Cases ; for are not Differences in Religion as fatal to the Peace and Unity of the Church, as the Subjects judging when they are oppress'd, and thereupon taking up defensive Arms, can be to that of a Civil State ? And do not more Wars, and Quarrels arise about Mens Differences in Religion, than from any other Cause you can name ? So that if the Peace of the Church were a sufficient Cause for supposing a certain, or infallible Judge in Religion, there would be the same Reason to suppose it in Civil Matters too. And therefore your Argument from the abuse of this Liberty of the Subjects judging when they may resist, is of no more force in one Case than the other : For I grant it may so happen in a Civil State, as well as in an Ecclesiastical, that the Subjects may rise up, and resist their Civil, as well as Spiritual Governors, without any just Cause ; doth it therefore follow, that God hath wholly delivered up Mankind to the domineering Humours of Men in Power, let them abuse it never so grossly ? And therefore we must not be wiser than God Almighty himself. And when he hath not appointed any certain, and infallible Judges, either in Civil or Spiritual Matters, without any Contradiction, or Resistance, we ought not to suppose a Necessity of such Judges, merely because of some Inconveniences, which may perhaps often happen from the abuse of that Christian Liberty he hath given us. For then, I doubt, you will find the Remedy would be much worse than the Disease ; as if, to avoid Heresies, we should set up the Pope for an infallible Judge. So would it be likewise, if, to avoid Civil Wars, and Rebellions, we should set up the Supreme Magistrate (as Mr. *Hobbs* hath done) for a certain and irresistible Judge of whatsoever Means are necessary for the People's Quiet and Preservation ; since I have already proved, that an insupportable Tyranny is not Civil Government ; and that the Supreme Powers can no more alter the Nature of Things, but their own Laws or Edicts, than they can ordain Poison to be used, instead of wholesome Food, by the People.

M. I confess what you have now said carries some weight with it ; and my own carnal Reason doth very much incline me to your Opinion, were it not for two things ; the one (as I said) is the horrid Rebellions that have, and may again arise in these Kingdoms from this Principle ; which hath made God so strictly forbid *all Resistance of the higher Powers*, upon any account whatsoever : And therefore you are much mistaken when you assert, that *Resistance*, though for *Self-defence*, is one of the *Liberties* that God hath left us ; since certainly he would never so severely have forbidden it, but that he not only knew how prone Men's corrupt Natures were to Rebellion, but also foresaw the fatal Consequence of it.

F. If

F. If God's Commands in Scripture be the greatest Argument you have against all Resistance whatever, I doubt not but to shew you (when we come to it) that you, as well as others, are mistaken in that strict Interpretation of those Places of Scripture. And as for the evil Consequences you suppose may follow from this Doctrine, I doubt not likewise but to convince you, that much worse will follow from the irresistible Tyranny of the Supreme Powers, than ever have happened from the *dreadfullest* *Rebellions*. And therefore, I desire you to take Notice, that what I have now said is not out of any design to justify so horrid a Crime as I grant *Rebellion* to be, or to incite Subjects to be guilty of it; but only to hinder Civil Government from being destroyed, and Mankind from being made miserable.

For I have first asserted, that no Resistance whatever is to be made in absolute Governments, but in those Cases in which the main Ends of Civil Government are visibly destroyed, or so near it, that there is no other means left but Resistance to prevent it. And then, when things are once brought to this pass, it is not the People that make this War, but the Governors, who by their Tyranny have brought the Commonwealth into this Anarchy and Confusion you so much dread; so that it is not the People, but they that are the Aggressors.

And as for the ill use that may be made of this Doctrine, to stir up the People to Rebellion, when they have no just, or sufficient Provocation to resist: This will not prove of that dangerous Consequence you imagine, if you will but consider, that I do not allow this Resistance in any Case, but when the Violence, or Oppression of the Governors is so evident, and insupportable to all the People that groan under it, that no indifferent Man in his Senses will be able to deny it; for as long as it remains disputable, whether or no the People are sufficiently oppress'd in their Liberties or Estates, the Trust reposed in the Supreme Magistrates makes them the sole Judges of the Necessity of such exorbitant Actions, as being intrusted by the People as Men supposed to be both wise and good, and themselves ignorant in divers Cases of the true means of their own Preservation; and the Supreme Powers remain the sole Judges, I say, as long as the Case is doubtful or uncertain.

But since you have already acknowledged, that the People might judge (if such a Case should happen) whether the Prince, or other Supreme Magistrate, makes actual War upon them, I would very fain know why the People cannot as plainly distinguish when he sends his Guards, or Dragoons, to take away their Lives and Liberties, or to turn them out of their Estates: And 'till this be done, and the Tyranny so evident, general, and insupportable, that it is past all Question, I grant that the People ought to have Patience, and rather suffer many Oppressions and Hardships, than put themselves into a State of War. So that I think it is *morally impossible*, that the People can be mistaken in so evident a Case. Nor I believe can you scarce shew me one Example, either out of ancient or modern History, of any whole Nation or People, or the major part of them, that did ever rise in Arms to cast off either a Foreign or Domestick Yoke, which pressed too hard upon them, but when they had the most unavoidable and justest Causes so to do. And I believe I can shew you ten Examples out of Histories, (if the Question were to be decided by them) for one you can shew me to the contrary. 'Tis true, some private Men may sometimes make Disturbances, or Rebellions, but 'tis commonly to their own just Ruin and Perdition: For 'till the Mischief be grown general, and the Violence of the Rulers become evident, and their Attempts to destroy, or make Slaves of them, are most sensible to all, or the greatest part of the People, they are commonly more a great deal disposed to suffer, than to right themselves by *Resistance*, well knowing the Mischiefs of War, and how destructive it will prove, not only to their Lives, but to the Welfare of their Families and Posterities, as well as private Concerns. So that the Example of some particular Injustice, Oppression, nay, absolute Ruin of here and there an unfortunate Person, moves them not. But if once they find their Lives, Liberties and Estates, universally assaulted, and about to be taken away, who is to be blamed for it; the Magistrate, or the People? For the former might have avoided it, if they had pleased, either by not urging them to that Extremity at all, or at least redressing those Grievances and Oppressions before they became so general, and insupportable, as not to be any longer endured.

So that, though I grant, the Ambition, or Turbulency of private Men have sometimes caused great Disorders in Commonwealths, and Factions have been fatal to States and Kingdoms; yet whether this Mischief hath ofner begun from the People's Wantonness, and Desire to cast off the lawful Authority of their Rulers; or from the Rulers Insolence, and Endeavours to get, and exercise a Tyrannical, Arbitrary Power over their People; that is, whether Oppression or Disobedience gave the first Rise to the Disorder, I leave it (as I said) to impartial Observers of History to determine.

But this I am sure of, whoever (either Ruler or Subject) goes about by force to invade the Rights of either Prince, or People, and lays a Foundation for overturning the Original Constitution and Frame of any Civil Government, he is guilty of the greatest Crime I think a Man is capable of, being to answer for all those Mischiefs, Bloodshed, Rapine, and Desolations which the breaking to pieces of Governments does bring on a Country. And he who doth it is justly to be esteemed a common Enemy, and is to be treated accordingly.

But as for the Instances you give of *Wat. Tyler*, and *Massianello*, I grant indeed it may so happen, that a great part of the common People, or Rabble, may sometimes upon sudden, or false Apprehensions; occasioned by some real Grievances or Oppressions, such as are great Taxes, or Gabels imposed by the State, take up Arms, and rebel against the Supreme Powers: Yet these Examples do not reach the Question in hand; these Insurrections or Rebellions you mention, being of a much less number than the whole People, or the major part of them; and in which I still include the Nobility and Gentry, and other Landholders, as the most considerable part. And so those Insurrections were in no wise justifiable, especially in such a Government as ours, where no Man can be taxed but by his own Consent, included in his Representatives; whereas all these Rebellions were chiefly (if not altogether) made by the meaner sort, or Scum of the People, of one, or a few Countries, whom I can never allow to make Disturbances; since they, having very little to lose, ought, in all Civil Governments whatsoever, to be directed and governed by those, in whom the Ballance of the Government in Lands, and other Riches, doth reside, and on whom they chiefly depend for their Protection and Subsistence; and consequently ought to make no Alterations in the State without their Consent and Approbation.

But as for your other Instance, of the Wars raised in these three Kingdoms against King *Charles* the First, upon the Pretence of our Religion, Liberties, and Properties being invaded, it is not proper to be treated of in this place; since we are now discoursing of the Power of Princes, and the Right of Subjects under absolute, and not limited Monarchies: And I grant, that some Resistance may be Rebellion under absolute Monarchies, which would not be so under limited ones; yet I do still suppose that it may be lawful under such limited Monarchy for the People to take up Arms, and make Resistance in defence of of those just Liberties and Privileges which they lawfully enjoy, either by the Original Constitution of the Government, or by Acts of Grace, or Concession of the Prince: But this requires a more large and accurate Discourse, which at another time I am ready to give you. Therefore, granting at present, that those Wars were downright Rebellion against the King; and also that they were made under Pretence of the Principle I now assert, yet doth it not at all overthrow the Justice of that Cause which I now maintain; since (as I have already more than once intimated) the abuse that may be sometimes made of a natural Right by some wicked, factious or hypocritical Men, ought not in the least to prejudice the Exercise of that Right to all the rest of Mankind, who may lie under a real Necessity of making use of it.

To conclude: If the People may never be trusted to judge when their Liberties and Properties are actually invaded, because they may happen one time or other to be mistaken, and so enter into a State of War, without Cause, to the Destruction of Mankind, this Argument would serve as well against all Princes and Commonwealths; who, being in the State of Nature with each other, should never make War for any Cause or Provocation, how great soever; because being Judges and Executioners too in their own Case, they may more easily happen to be mistaken. I suppose you yourself will grant, that one, or a few Men are more apt to be in an Error, than a Hundred thousand. And I have
already

already proved, that where the People have never wholly given up their Liberties and Properties unto the absolute Will of the Supreme Powers, they are, as to that, still in a State of Nature, and do reserve to themselves a Right of judging when they are violently and insupportably invaded; and consequently of vindicating themselves from that Oppression. And therefore, granting what you have said to be true, that the People may sometimes happen to abuse this natural Right of judging, and resisting, by exerting it, when there is no real and absolute Necessity: So on the other side, if they are wholly debarred from it, because they may happen sometimes to abuse it, the freest People in the World, *viz.* (our selves, for Example) may easily be reduced into a Condition of absolute Slavery and Beggary, and that without all Remedy by any humane Means that I can think of; and which is the worst Mischief of these two, I leave to your self, or any indifferent Man to judge.

M. If you will have my Opinion in this point, I must freely tell you, that it is a hard Matter to find out a Mischief so destructive to the People, and which they should exchange for this miserable State of War, which you suppose may prove so beneficial to them; and yet I doubt, if it be thoroughly looked into, not only the Doctrine itself, but also the lasting Wars and Miseries it may produce, would sufficiently prove the contrary; since the cruellest Tyranny, Slavery, and Loss of Estates, or any thing else almost, may be better born with in Peace and Unity, than a Civil War with the greatest Liberty and Plenty; seeing all such Comforts would quickly be devoured, like *Pharaoh's* fat Kine, by such a cruel Monster feeding in their Bowels. And therefore, since Civil War is one of the greatest Calamities and Punishments that God uses to send upon a Nation, it seems evident to me, that the Welfare of any State, or People requires them to be obedient unto the Supreme Powers, though they be never so great Oppressors, or cruel Tyrants. For when once they enter into this dismal State of War, who can tell whether it will have an end, without almost the total Destruction of the Nation, or at least by bringing them into a far worse Condition of Slavery and Suffering, than they were before; since the State of Princes, or other Supreme Powers, can never be so mean and inconsiderable in the World, as not to find, when like to be oppress'd by such Insurrections and Rebellions of their Subjects, sufficient Assistance from neighbouring Princes, or States; who, making the Cause of such a Prince their own, will be sure to assist him to the utmost of their Power; it being found true by Experience, as *Tully* long ago observed, "That the afflicted State of Kings does easily draw the Help and Pity of many others, especially of those, who are either Kings themselves, or do live in a Kingdom, the Regal Name being by them esteemed to be great and sacred." And farther, how ready a way it is to subvert the State of any such distracted Kingdom, and to bring it under the Subjection of Foreigners, we need not seek a plainer Proof, than by an Example no farther off than *Ireland*; where *Dermot*, King of *Leinster*, being forced by his rebellious Subjects to crave the Aid of King *Henry* the Second for his Restoration to his Kingdom, his Assistance to recover his Right produced that effect which we now see, *viz.* That the *Irish* lost their Dominion, and became subject to the Crown of *England* even to this Day.

Cicero Orat. pro lege Manili.

And supposing, that the Subjects might likewise be assisted by some foreign Prince, who would undertake their Deliverance, they would not be in a much better Condition; since, if he were an absolute Monarch himself, he would be sure, for Example sake, as well as for their own Security, to carry as strict a Hand over them, and use them more severely than their own Prince had done before; and, I doubt not, but if *Lewis*, Prince of *France*, had been crowned King of this Kingdom, as he was very near it, toward the latter end of King *John's* Reign, but that he would have been more cruel and tyrannical than ever King *John* had been before: So that they would have got nothing by the Bargain, but a Change of Masters, and a heavier Yoke imposed upon them by a Foreigner.

And so much the Viscount *Melun* confessed upon his Death-bed to many of the *English* Nobility, which was the Reason of their returning again to their Allegiance to *Henry* the Third. So that I think it had been much better for the Barons and Nobility of this Kingdom never to have stirred or rebell'd at all against their lawful Prince.

F. You

F. You seem so in love with Slavery, and all the Consequences of it, that it is a hundred pities but that you should feel the smart of it a little while, provided no Body was to suffer by it but your self and those of your Opinion: But could you see the miserable Condition those poor People are in who live under Arbitrary and Tyrannical Government, I doubt not but you would be of another Mind, and prefer a War now and then, tho' never so violent, before such a Peace; for when Men are once reduced to so desperate a Condition, as neither to be secured of their Lives, Liberties or Estates, they may have some hope to redress themselves by *Resistance*, but need not fear to be reduced to a worse Condition than they were before; and therefore I cannot understand how all the Comforts of a Civil Life would then be lost by a Civil War, when I have already put it as a chief part of the Case, that *Subjects* are never to make such a *Resistance* but when the *Supreme Powers* are just about to begin, or else have actually enter'd into a State of War against their *Subjects*: For what can any foreign Enemy do more if he conquers them, than take away their Lives, Liberties and Estates? So that this is so far from being a State of Peace, that indeed the People are already exposed to all the Calamities of War; but a War, which you suppose may be made without any *Resistance*, whilst the Subjects (forsooth) are bound to keep the Peace; but much such another Peace as would be in a House into which *Thieves* having broken, and the *Inhabitants* retiring into some upper Rooms, there stand upon their Guard and make Resistance; whilst the Thieves having seized upon all they have below, one of them should make such a Speech as this; *I pray Sirs come down and submit yourselves to us, for we assure you we intend not to kill you, but only to bind you and take away all you have; and is not Slavery and loss of Goods better with Peace and Safety, than by assaulting us to provoke us to fire the House and kill you all? for if you once enter into a State of War with us, it is very likely to end with your total Destruction; for if you continue to resist us, or think to call in Company to your Assistance, we can likewise call in many more of our Party to come and help us; and then expect no Mercy.* Now pray tell me, would not this be a very rational Argument to move these People to come down and surrender themselves to these Thieves, and partake of the Benefits of this excellent Peace they propos'd? and whether they would not tell them, that by shooting they would also call in the Neighbouring Town, who might be too strong for all their fellow Thieves? Now if you will but take these honest People of the next Town for such Neighbouring Princes or States, who may joyn in the Assistance of such an oppress'd People, this Simile will fully answer your Argument of those Neighbouring Princes that may take part with an oppressing Tyrant: And as for the consequence of such Assistance, on the one side or the other, that it may happen to bring them into a worse Condition than they were before, *viz.* a Subjection to Foreigners (as I have put the Case) it can be no cause to deter the People from *Resisting*; for if they were (as I suppose) reduc'd to a Condition of Slavery before, and had lost all their Liberties and Properties, how can we imagine them in a worse Case than they are already? And it is all one to such a People, whether their own or a strange Prince did tyrannize over and oppress them: Nay, were I to take my Choice, I had much rather be tyrannized over and oppress'd by a Foreigner than from my own natural Prince; since the former coming in by Force, and without any precedent Promise or Compact, I lie wholly at his Mercy, who hath no Obligation upon him; and I had much rather, if I were to be a Slave, be so to a Stranger than to my own Father, if I were assured that both the one and the other would use me with like severity. And to answer your Instance of your *Irish* King, I think that Nation hath been so far from losing any thing by their Subjection to the *English* Government, that they have gained far greater Privileges and Liberties both for their Persons and Estates, than ever they enjoyed under their own Princes; so that they are rather the better than the worse by the Change. And besides, the Example is not to the Point we discourse of; the Quarrel being between two *Irish* Kings, where the stronger having injured the weaker, he called in the *English* to revenge his Quarrel; whereas the Question here is concerning the like Action done by the People against their Prince. And as for your other Example of Prince *Lewis*, it is uncertain whether the Condition of the *English* Nation would have been either better or worse under a *French* King. But thus much I am sure of, that had King *John* proceeded in that Tyrannical Course against his Barons and the rest of his Subjects,

Subjects, they could scarce have been in a worse Condition under the *French*; nay the *Mons* themselves, had King *John* actually surrendered his Crown to the *Sacred* Emperor, as the Historians of those Times relate he offered to do.

Nor can I be of your Opinion, that it had been much better for the Barrons and Nobility of this Kingdom never to have stirred or resisted the King at all; since if they had not, they had never obtained the *Great Charter* of our Liberties from him; and if they had not as vigorously defended it when they had once got it, I doubt not but the People of *England* had been long before this time in the same Condition, as to their Liberties and Properties, as some of our Neighbouring Nations; all which is sufficient, I think, to prove that *Resistance*, in desperate and unavoidable Cases, is not attended with those Mischiefs and Inconveniences you suppose.

M. I shall not say much more in answer to your last Discourse, since it would be to little purpose, but only take notice that Similes are not Arguments; and therefore your Comparison between Thieves and honest Men doth not hold as to Princes and Subjects; since sure there is a great deal of difference between those that are to be *Obedied as the Ordinance of God*, and those who are obliged in Conscience to be subject to them, and Thieves who act directly contrary to God's Will, and honest Men who having no obligation to them may justly resist them: So that if that be false, the rest of the Comparison will signifie nothing. And as for what you say concerning *Magna Charta*, I think it is not much for its credit to have been extorted by Force, and afterwards defended by Rebellion; tho' I will not go about to impeach the Validity of it, since so many of our succeeding Kings have so solemnly and voluntarily confirmed it; only pray take notice that it is wholly derived from the Grace and Bounty of our *Monarchs*, and therefore we are not to resist, tho' it may happen to be sometimes, and in some particular Cases, broken and infringed by the King, for some great Occasions and Necessities, of which we are not competent Judges.

But to come to the rest of those evil Consequences that may attend your Doctrine of *Resistance*; I think the Benefits would be much greater to the People by strictly adhering to those Doctrines of *absolute Subjection* and *Non-resistance*, than by propagating yours of *Rebellion*; for if the former were constantly taught and inculcated as most beneficial for them, and if they were once really persuaded of the Truth of it, and would both constantly profess and practise it, it would make all Princes much more gentle and mild to their Subjects, than otherwise at some times they are; for now they are still fearful that they will take the first Opportunity they can to take up Arms against them; and upon the least Grievance or Misgovernment, to resist their Authority; for then Princes not needing to keep any such constant Guards and Standing Armies, might afford to lay much easier Taxes and Impositions upon them, for the maintenance and support of the Government, than now they do; and in short, would have much fewer Temptations to Tyranny and Oppression, could they be once assured of their Subjects *absolute Obedience* and *Subjection*: Whereas when they are under those constant Fears and Suspicions of *Insurrections* and *Rebellions* against them upon the least Occasion; it is no wonder if they are tempted sometimes to abuse this Power for their own Security. And therefore we read in our Histories, that *William the Conqueror* never thought himself secure from the *English* whom he had newly conquered, till such time as he had turned most of the Nobility and Gentry out of their Offices and Estates, lest they should have any Power left either in his Life-time, or after his Death, to turn him or his Posterity out of the Throne, as they did the Heir of the *Danish* King *Cante*, who with his *Danes* had before conquered *England*, as King *William* did afterwards with his *Normans*: So that upon the whole Matter it seems to me much more to conduce to the main design of *Civil Government*, viz. the Happiness and Peace of Mankind in general, that *Princes* and other *Supreme Magistrates* should be suffered (I will not say authorized) by God, sometimes to abuse their Power to the general Oppression and enslaving of the People, without any *Resistance* on their side, expecting their Deliverance wholly from him who can bring it about in his good time, and by such means as shall seem most meet to him, than that Subjects should take upon them to be both Judges and Executioners too in their own Case; and thereby introduce not only all the Mischiefs of *Civil War*, and all those cruel Revenges which the Wrath of an incensed Prince may justly inflict upon such Rebels in this Life, but also the Wrath of God, and those

Punishments

Punishments that he hath denounced in the *Holy Scriptures* in the Life to come, against such Rebellious Subjects as dare resist the *Supreme Powers* ordained by God.

F. Before I answer the main part of your last Discourse, give me leave first to justify my Simile; for tho' I grant Similes are no Arguments, yet they often serve to expose the absurdity of several things, which either the false Colours of Eloquence, or the too great Authority of learned Men, might otherwise have hid from our Eyes: And therefore if the *Supreme Powers* have no Authority from the *revealed Will of God*, or the *Law of Nature*, nor by the *Municipal Laws* of any Country, to invade their Subjects Lives, Liberties or Estates, they may be so far compared to Thieves and Robbers when they do; nor are such violent Actions of theirs to be submitted to as the Ordinance of God. And I suppose you will not deny, but that a Prince or State that does thus, acts as directly contrary to God's Will as Thieves themselves; and consequently, all honest Men or Subjects having so far no obligation to suffer or obey, may justly resist them; so that if this be true, all the rest of the Comparison *currit quatuor pedibus*.

But as for your Reflections upon *Magna Charta*, it is you your self, not I, that asserted it to have been extorted by Force, and defended by Rebellion; for it is very well known to those who are at all conversant in our *English Histories* and *Laws*, that there was nothing granted in that *Charter* which was not the Birth-right of the Clergy, Nobility and People long before the *Conquest*, and were comprized under the Title of King *Edward's Laws*, and which were after confirmed by *William I*; as also more expressly by the Grants of his Son *Henry I.* and King *Stephen*; as appears by their Charters still to be seen. And therefore these fundamental Rights and Privileges were not extorted by Force from King *John*, as you suppose: The War commencing between him and his Barons, was not because he would not grant them fresh Privileges which they had not before; but because he had not kept nor observed the fundamental Laws of the Land, and those Rights and Privileges which before belonged to the Clergy, Nobility and People, as well by the common Law of the Land, as the Grants of former Kings. And therefore if King *John*, by his apparent Breach of them, forced the Nobility and People to defend them, it was no Rebellion for so doing; nor was it ever declared to be so by any Law now extant.

But to come to the main Force of your Argument; I confess it were an admirable Expedient, not only against Rebellion, but also the Tyranny of Princes, to Preach that they should not oppress their People, nor yet that the People should rebel against them; but the preaching of these Doctrines, or getting as many as you can to believe them, will no more make Princes leave keeping Standing Armies, or laying great Taxes upon their People, than constant preaching against Robbery or Murder, will take away the necessary use of Gallows out of the Nation; since we know very well, that as long as the Corruption of humane Nature continues, so long must likewise all powerful Remedies against it. And therefore your Instance of *William the Conqueror* will signify very little; for I believe, had all those learned Divines (who have of late so much written and preached for *Passive Obedience* and *Non-resistance*) been then alive, and had exerted the utmost of their Reason and Eloquence to prove them necessary; nay farther, I do not believe, tho' all the People of *England* should have given it under their Hands, that they would not have resisted or rebelled against King *William*, that yet he would have trusted them the more for all that, or have kept one Soldier the less for it; nor have remitted one Denier of those great Taxes he imposed; for he was too cunning and politick a Prince not to understand humane Nature, which cannot willingly endure great and intolerable Slavery and Oppression without Resistance, if Men are able; and therefore he very well knew, that after the forcible taking away of so many of the *English Nobilities Estates*, there was no way but Force to keep them in Obedience: And as Princes can never be satisfied that their Subjects have been thoroughly paced in these difficult Doctrines; so they can never be secure that they will not play the Jades, and kick and sling their Riders when they spur them too severely, and press too hard upon them. And therefore, I doubt such Princes whose Government is severe, will always find it necessary to ride this Beast (as you call it) the People, with strong Curbs and Cavisons. But besides all this, there is likewise another Infirmity in the Nature of Mankind, and of which Princes may as well be guilty as other Men, that they are more apt to oppress

press and insult over those, whose Principles or natural Tempers may be against all Resistance. And for this I appeal to your Example of the *Primitive Christians*, who were not one jot the better used by the *Roman Emperors*, tho' they expressly disclaimed all Resistance of those Emperors for Persecution in Matters of Religion: And tho' some Neighbouring Princes are thought to have their Subjects in more perfect Subjection, and that either their *Religion* or *Natural Tempers* make them less apt to resist the Violence and Oppression of their *Monarchs*, than the *English*, or other Nations; yet I desire you to enquire, whether Taxes, and all other Oppressions, do not reign as much under those Governments, however sensible the Princes may be of their Subjects Loyalty and Obedience.

Therefore to conclude, I shall freely leave it to your Judgment, or that of any indifferent Person, which is most agreeable to the main Ends of *Civil Government*, viz. The common Good of Mankind, and the Happiness and Safety of each particular Kingdom or Commonwealth, that the Violence and Tyranny of Princes should be sometimes resisted; than that the People, under the pretence of this *irresistible Power*, should be liable to be made Beggars and Slaves whenever any Prince or State had a mind to it. And I appeal to your own Conscience, if the supposed Belief of the *Passive Obedience* of some of our Church, was not one of the greatest Encouragements which the King and the Jesuited Faction had to bring in the Popish Religion, under the colour of the *Dispensing Power*, Ecclesiastical Commissioners, and force of a Standing Army; from which unavoidable Mischiefs nothing under God but this wonderful *Revolution* could have rescued us: And therefore I think it becomes any honest Man to thank God for it, and join with his Highness the Prince of *Orange*, as the only means (now Miracles are ceased) which God hath been pleased to ordain by the course of his Providence for our Deliverance.

M. I must confess, I am somewhat staggered with those Reasons and Arguments you have now given me against those Principles, which as I have always, so must still esteem as sacred, till I am convinc'd I am in an Error; and perhaps, if I were to consult my own carnal Reason and natural Inclinations, I should come over to your Opinion. But since it hath pleased God to lay much higher Restraints and stricter Rules of Obedience and Subjection on us, by his revealed Will in the Scripture, beyond what can be discovered by the Light of Nature; and that under the highest Penalty, viz. Damnation; I can see no reason why God Almighty may not grant Eternal Life upon what Conditions he pleases, tho' never so hard and uneasy for Flesh and Blood to perform: So that if our Saviour *Jesus Christ* hath commanded us to take up his Cross and follow him, that is, to suffer all sorts of Injuries and Afflictions, nay Death it self (as he himself did) rather than to resist the *Supreme Powers* under which he lived; I cannot see any reason why he should not propose his own Example for our Imitation: And as he hath enjoined, and expects from us greater Degrees of Chastity, Charity and Humility, than ever he did from the *Jews* or *Pagans*; so I see no reason why he may not likewise exact from us a greater and more perfect Obedience and Submission, without any *Resistance* to all Sovereign Princes and States, than ever he did either by the Law of *Moses*, or that of Nature; not but that there are sufficient Proofs in the *Old Testament*, for the *absolute Power* of Princes against all *Rebellion* or *Resistance* in Subjects: Tho' I confess this Doctrine is more plainly proved by the Example of our Saviour, and the Precepts of his Apostles in the *New Testament*, as also from the Example of the *Primitive Christians* in Obedience thereunto.

F. I perceive you begin to distrust your Arguments drawn from natural Reason and the Laws of Nature; and when you are pressed with the absurdity of this Doctrine of yours, you fly from God's Natural to his Revealed Will, and take Refuge under the Covert of the Holy Scripture, to impose an Opinion contrary to the common Sense and natural Notions of Mankind, not corrupted with the Prejudices of Education: And therefore give me leave at present to tell you, that I think I shall be able to prove, that the *Passive Obedience* (as you call it) of the *Primitive Christians*, and their Sufferings for the Name of *Christ*, will not at all contradict that natural Right, which I suppose all Freemen to have, as well under *Civil Government* as in the *State of Nature*, for the defence of their Lives, Liberties and Properties, unless where the common Good and Peace of the whole or major Part of the People require the contrary: And therefore the same Reasons

which oblige particular Persons to be quiet, and not to disturb the publick Peace of the whole Society, for their own private Safety and Advantage ; unless when the whole Body of the People, or the major Part of them is thus violently assaulted in their Lives, Liberties and Estates ; the same Considerations of the publick Good of their Country (whereof every Man is a Member) doth then as strongly persuade, I may say enjoin them to take up Arms and defend themselves for the Preservation of the whole People or Community, whose natural and civil Rights being now attack'd, can no otherwise be restored to the same State they were in before, but by that last Remedy that can be used in this Case, *viz. Vim vi repellere.*

M. I must confess that of all *Commonwealth Hypotheses*, yours is most reasonable, being coherent with it self, and also most likely to be swallowed by the People ; because it flatters our corrupt Natures, to which this Christian Doctrine of *Passive Obedience* is so directly opposite ; as also, because it gives them a full Liberty, I mean, not only the Representative Body, but the major part of them, to reassume that Power which you pretend they never parted with ; and so consequently all necessity of suffering (except when they please to think they have justly deserved it) is taken away ; and the Sufferings of the *Primitive Christians* will be rendered only a tame Madness, and that St. Paul was very much overseen to enjoin this Subjection to the *Romans*, under the Government of one of the most cruel Tyrants that ever sway'd that Scepter : But we have not so learned Christ ; and therefore I am firmly persuaded, that we ought to be strictly Obedient, without any Resistance to those Civil Governors that God hath been pleased to set over us, let them abuse their Power never so Tyrannically.

F. I am beholden to you for your plain dealing with me in this Matter, and pleased to find that you have an Inclination to my Principles, were it not for some Texts of Scripture and Citations out of the Fathers and Church History which give you a Prejudice against them, which I hope when they come to be closely examined will signify no more than the former.

But for the dispatching this important Controversy, I pray give me leave to propose this easy Method ; first, that you would be pleased to lay down your Authorities out of Scripture in order ; and afterwards, to shew me that the ancient Fathers and Primitive Church always understood those Texts in the same Sense that you do, *viz.* That no Resistance of the *Supreme Powers* is lawful to be exercised in any Case whatsoever.

M. I approve of your Proposal, and therefore I will first begin with those Proofs which are expressly against all Rebellion or Resistance in the *Old Testament*. The first Governor that God set over the Children of *Israel*, when he brought them out of the Land of *Egypt*, was *Moses* ; and I think I need not prove how sacred and irresistible his Authority was : This is sufficiently evident in the Rebellion of *Numb. 16.* *Korah, Dathan and Abiram*, against *Moses* and *Aaron*, when God caused the Earth to open her Mouth and swallow them up. And lest this should be thought an extraordinary Case, *Moses* and *Aaron* being extraordinary Persons immediately appointed by God, and governed by his immediate Direction ; the Apostle St. *Jude* alledges this Example against those in his Days, who were Turbulent and Factious, who despised Dominions, and spake evil of Dignities, that they should perish in the gainsaying of *Core* ; which he could not have done, had not this Example extended to all ordinary as well as extraordinary Cases ; had it not been a lasting Testimony of God's Displeasure against all those who oppose themselves against *Sovereign Powers*. But *Moses* was not always to rule over them, and therefore God expressly provides for a Succession of *Sovereign Powers*, to which they must all submit : The ordinary *Sovereign Power* of the *Jewish Nation*, after *Moses's* Death, was devolv'd either on the *High Priest*, or those extraordinary Persons whom God was pleased to raise up, such as *Joshua* and the several *Judges* ; till in *Samuel's* Days it settled in their Kings. For as for the *Jewish Sanhedrim*, whose Power is so much extolled by the *Jewish Writers* (who are all of a late Date, many Years since the Destruction of *Jerusalem*, and therefore no competent Witnesses of what was done so many Ages before) it does not appear from any Testimony of Scripture, that there was such a Court of Judicature, till after their Return from the *Babylonish Captivity*.

But yet God took care to secure the Peace and good Government of the Nation, by appointing such a Power as should receive the last Appeals, and whose Sentence in all Controversies should be final and uncontrollable, as you may see in
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Deuteronomy, chap. 17. There were indeed inferior Magistrates and Judges appointed in their several Tribes and Cities, which *Moses* did by the Advice of *Jethro* Deut. 17. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 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999, 1000 But as the *Supreme Power* Exod. 18. was still reserved in the Hands of *Moses* while he liv'd; so it is here secured to the *High Priest* or *Judges* after his Death; for it is expressly appointed, that if those *inferior Judges* could not determine the Controversy, they should come unto the *Priests*, the *Levites*, that is, the *Priests* of the Tribe of *Levi* (who by the 12th Verse appear only to be the *High-Priest*) and to the *Judge* that shall be in those Days; that is, if it shall be at such a time when there is an extraordinary Judge raised by God (for there were not always such Judges in *Israel*, as is evident to any one who reads the Book of *Judges*) they should enquire of them, and they shall shew the Sentence of Judgment; and thou shalt do according to the Sentence, which they of that Place (which the Lord shall chuse) shall shew thee, and thou shalt observe to do according to all they shall inform thee: And what the Authority of the *Chief-Priest*, or of the *Judge*, when there was one, was in those Days, appears from ver. 12. And the Man that will do presumptuously, and will not hearken to the *Priest* (that standeth to Minister there before the Lord thy God) or unto the *Judge*, even that Man shall die, and thou shalt put away the Evil from *Israel*: This is as absolute an Authority as the most absolute Monarch S. C. R. p. 10, in the World can challenge, that Disobedience to their last and final Determination, whatever the Cause be, shall be punish'd with Death: And what place can there be for Resistance in such a Constitution of Government as this? It is said indeed, ver. 11 And according to the Sentence of the Law which they shall teach thee, and according to the Judgment that they shall tell thee, thou shalt do. And hence some conclude that they were not bound to abide by their Sentence, nor were punishable if they did not, but only in such Cases when they gave Sentence according to the Law of God: But these Men do not consider that the Matter in Controversy is supposed to be doubtful, and such as could not be determined by the inferior Courts, and therefore is submitted to the Decision of the *Supreme Judge*; and as he determin'd, Ibid p. 11. so they must do; and no Man, under the Penalty of Death, must presume to do otherwise; which takes away all liberty of Judging from private Persons, tho' this *Supreme Judge* might possibly mistake in his Judgment, as all humane Judicatures are liable to Mistakes; but it seems God Almighty thought it necessary that there should be some final Judgment, from whence there should be no Appeal, notwithstanding the possibility of a Mistake in it.

So likewise when God had appointed *Joshua* to succeed *Moses*, and had conferr'd upon him all that Power that *Moses* had before; and that he came to give his Orders to the two Tribes and an half before their Passage over *Jordan*, you'll find that they not only promis'd him perfect Obedience, as they had before pay'd to *Moses*; but farther also assur'd him, That whosoever he be that doth rebel against thy Joshua 1. 18. Commandment, and will not hearken unto thy Words in all that thou commandst him, he shall be put to Death: So that there was a *Supreme and Sovereign*, that is, an unaccountable and irresistible Power in the *Jewish Nation* appointed by God himself; for indeed it is not possible that the publick Peace and Security of any Nation should be preserv'd without it.

E. You have, Sir, methinks taken a great deal of Pains to prove that which I do not at all deny, but rather joyn with you to assert, that Stubbornness and Disobedience to God's Commands is a very great Sin, and the Rebellion thereunto is likened to the Sin of Witchcraft; as *Samuel* shews to no less a Man than King *Saul* himself, when he had rebelled against (that is, disobeyed) God in not destroying the King of the *Amalekites*; and therefore it is no wonder, that in a Government where God himself was the Head, and had appointed *Moses* and *Aaron* as his Lieutenants or Substitutes under him, the one in Civil, and the other in Ecclesiastical Matters; that God should punish their Murmuring and Rebellion against them as done to himself; not that I deny but that *St. Jude* does likewise denounce this Judgment of perishing in the gainsaying of *Core*, against those wicked Hereticks the *Gnosticks*, who thought themselves set free from all Civil Subjection, and therefore despis'd Dominions, and spake evil of Dignities; that is, not the Men invested with them, but Civil Magistracy it self; which they look'd upon as inconsistent with their Christian Liberty. 1 Sam. 15. 23.

But yet for all this, and that I grant God denounced no less than the Sentence of Death against any Man that refused to hearken to the *Priest*, or unto the *Judge*, in those Matters that should be brought before them by way of Appeal; and also

that whoever would not obey *Joshua*, but should rebel against his Commands, should be put to Death; yet can I not think that there was any *Irresistible Power*, plac'd by God, in the Persons of *Moses*, *Joshua*, or the *Judges*, or that it was not possible for the publick Peace or Security of the Nation to be preserv'd without that: But indeed all these Persons above nam'd, being to be obeyed as God's Substitutes or Lieutenants, as he was King of the Children of *Israel*, so likewise their Commands or Dictates were only so far to be observ'd as they perform'd this Commission; and if they had swerved from it, I doubt not but they might not only have been disobeyed, but also resisted by them: And therefore pray tell me, suppose this *Rebellion of Core* had happened because *Moses*, making himself a distinct Party amongst the mix'd multitude of Strangers that came up with them out of the Land of *Egypt*, and others of his own Tribe, or whom he could
Exod. 12. 38. bring over to his Faction, under colour of this *Sovereign Power* (which God had given him) had, instead of leading and governing the People committed to his Charge, taken upon him to have rob'd them of all those Goods and Riches which they had brought with them out of the Land of *Egypt*, and had sold the People or their Children for Slaves to the Neighbouring Nations, to enrich himself and his Family; do you believe that the Children of *Israel* had been obliged to have obeyed such a Leader, and not have resisted him and his Party if there had been occasion? So likewise, if *Joshua*, instead of leading God's People into the *Holy Land*, had taken upon him, notwithstanding God's Commands to the contrary, to have carried them again into *Egypt*; can you think they had been bound to obey him, and might not lawfully have resisted him, if he had gone about, by the assistance of his Accomplices, to force them to it? For I doubt not but if these Substitutes had acted contrary to that Commission God had given them, they were no longer to be look'd upon as God's Vicegerents, no more than the now Lieutenant of *Ireland*, the Lord *Tyrconnel*, ought to be obeyed, and not resisted, if he should go about, by vertue of that Commission which the King hath conferred upon him, and by the help of the *Rebellious Irish* in that Kingdom, to murder all the *Protestants* and set up for himself. So likewise all the strict Obedience and Submission that was to be paid to the Sentence of the High-Priest or Judge, was only in relation to God himself, whose Sentence it was, and who always revealed his Will, either to the Judge by particular Inspiration, or to the High-Priest by the *Ephod* or *Urim* and *Thummim*; and therefore we read in *Judges*, that *Deborah*, tho' a Woman, yet being a Prophetess inspir'd by God, judg'd *Israel*.

Now suppose that this Judge or High-Priest, neglecting (like *Balaam*) the *divine Inspiration*, and the Dictates of that sacred *Oracle*, had, instead of a righteous Judgment, given a Sentence in a Cause that had come before them, whereby Idolatry, or Breach of some great Point of the Law of *Moses*, had been established; do you think that God ever intended that this Sentence should have been obeyed under pain of Death?

And therefore you may find in the second Book of *Maccabees*, that when *Jason* and *Menelaus* had by Bribery obtained the High-Priesthood, tho' it was then the chief Authority (under the Kings of *Syria*) both in Ecclesiastical and Civil Matters; yet when they went about to undermine the *Jewish* Religion, and seduce the
2 Maccab. 4. People to Idolatry, they were not at all look'd upon as High-Priests, *but are there*
2. 25. *called ungodly Wretches, doing nothing worthy of the High-Priesthood, but having the Fury of a Cruel Tyrant and of a Savage Beast*; and were so far from being at all obeyed by the *Jews*, that *Jason*, *Menelaus* and *Alcimus*, who were successively High-Priests in the room of *Onias*, were, as far as the People were able, oppos'd by them; till at
1 Maccab. 7. last *Judas Maccabeus* taking Arms against *Alcimus* the *Simoniacal* High-Priest, restored
23, 24, 25. by force the true Worship of God: So that you see that the Obedience was not pay'd to the Person of the High-Priests, only as such, by vertue of this Precept in *Deuteronomy*, but only as far as they observ'd the Law of *Moses*, and gave Sentence or Judgment in all Matters according to it. And therefore it is no good Argument of yours, because the People were bound to obey their Sentence in doubtful Cases, therefore they had an absolute irresistible Power to give what Judgments they pleas'd, and that the People were obliged to observe them under pain of Death, and being guilty of Rebellion; for that had been to have given the High-Priests and Judges a Power to have alter'd the true Worship of God whenever they pleas'd, and to have introduced Idolatry in the room of it. So that I think none of these Places will prove any more, but that God and his Lieutenants
were

were to be obeyed ; and that it was Rebellion to resist them under the Jewish Government, as long as they did not force the People to Idolatry, which I do not at all deny.

M. Tho' you labour to wave these Examples and Precepts which I have now cited, and will not take them for convincing ; yet let me tell you, your Exceptions against them only tend to prove that Idolatrous Kings might be resisted under the Jewish Law, which is directly contrary to the sacred History ; as I shall prove very clearly to you by these following Testimonies I shall make use of ; yet I think it is much more plain, that when the Jews would have a King, their Kings were to be invested with a Supreme and Irresistible Power ; for when they desired a King of Samuel, they did not desire a meer nominal and titular King, but a King to Judge them, and go in and out before them, and Fight their Battels, that is, a King who had the Supreme and Sovereign Authority, a King who should have all that Power of Government (excepting the peculiar Acts of the Priestly Office) which either their High-Priest or their Judge had before.

And therefore when Samuel tells them what shall be the Manner of their King, tho' what he says doth necessarily suppose the Translation of the Sovereign and Irresistible Power to the Person of their King, yet it doth not suppose that their King had any new Power given him, more than what was exercised formerly by the Priest and Judges ; he doth not deter them from chusing a King, because a King should have greater Power, and be more uncontrollable and irresistible than their other Rulers were ; for Samuel himself had before as Sovereign and Irresistible a Power as any King ; being the Supreme Judge of Israel, whose Sentence no Man could disobey or contradict, but he incurred the Penalty of Death, according to the Mosaiacal Law : But the Reason why he dissuades them from chusing a King, was because the external Pomp and Magnificence of Kings was like to be very chargeable and oppressive to them ; He will take your Sons and appoint them for himself, for his Chariots, and to be his Horse-men, and some shall run before his Chariots. And he will appoint him Captains over Thousands, and Captains over Fifties, and will set them to ear his Ground, and to reap his Harvest. And thus in several Particulars he shews them what Burdens and Exactions they will bring upon themselves by setting up a King, which they were then free from ; and if any Prince should be excessive in such Exactions, yet they had no way to help themselves ; they must not resist nor rebel against him ; nor expect that, whatever Inconvenience they might find in Kingly Government, God would relieve and deliver them from it when once they had chosen a King : Ye shall cry out in that Day, because of your King that you have chosen you ; and the Lord will not hear you in that Day ; that is, God will not alter the Government for you again, how much soever you may complain of it.

This, I say, is a plain Proof, that their Kings were to be invested with that Sovereign Power which must not be resisted, tho' they oppress their Subjects to maintain their own State, and the Grandeur and Magnificence of their Kingdoms. But I cannot think that these Words contain the Original Grant and Charter of Regal Power, but only the Translation that was formerly in their High-Priests or Judges to Kings : Kings had no more Power than their other Governors had, for there can be no Power greater than that which is irresistible : But this Power in the Hands of Kings was likely to be more burdensome and oppressive to them, than it was in the Hands of their Priests and Judges, by reason of their different way of Living ; which is the only Argument Samuel makes use of to dissuade them from transferring the Supreme and Sovereign Power to a King ; and therefore I rather chuse to translate *Mishpat*, as our Translators do, by the Manner of the King, than with some learned Men, by the Right of the King, thereby understanding the Original Charter of Kingly Power ; for it is not the Regal Power which Samuel here blames, which was much like that which he himself had exercised while he was Supreme Judge of Israel, but their Pompous way of living, which would prove very oppressive and burdensome to them, and be apt to make them complain, who had not been used to such Exactions.

F. You have, I must confess, made a much fairer Exposition of this out of Samuel, than divers of our high-flown Divines, who would render this *Mishpat* as it is in the Hebrew, i. e. the Manner of the King, by Right of the King ; whereby they would entitle all Kings whatsoever to an absolute Right to all their Subjects Estates, whenever they would take them away ; not taking notice that this Word

Mishpat

Mishpat is sometimes used not only in a good, but a bad Sense, not for *Right* or *Power*, but for an *evil Custom* or *Abuse*; and therefore you may find, in the second Chapter of this Book of *Samuel*, that speaking of the Sons of *Eli*, who were
 Ver. 12, 13, 14. Sons of Belial, they knew not the Lord, that the Priests (viz. their) Custom with the People was, that when any Man offered Sacrifice, the Priests Servant came, whilst the Flesh was in seething, with a Flesh-hook of three Teeth in his Hand; and he strook it into the Pan, or Kettle, or Caldron, or Pot; all that the Flesh-hook brought up, the Priest took for himself: so they did in Shiloh, unto all the Israelites that came thither. Where I desire you to observe, that that which is render'd in our Translation the Priests Custom, is in the Hebrew *Mishpat*, which they render *Right*; so that if this Word would do it, these wicked Priests had also a Right to take away as much of every Man's Sacrifice as they pleased for themselves; nay, to take it before God himself was served, and the Fat burnt (according to the Rites of Sacrificing.) And by the same Rule, Kings also by this Word *Mishpat* should have a Right to take what they pleas'd of the Subjects Estates.

I do likewise so far agree with you, that *Samuel* does not here describe a *Tyrant*, but one of those absolute Eastern Princes, who made use of a great part of their Subjects Estates (as they do at this day) to maintain their Standing Armies, and Royal Pomp and Magnificence. So that I grant, in short, *Samuel* meant no more when he thus spake to them, but, Since you will have a King, he must be maintained like a King, and very great Taxes will be laid upon you for this end; of which Burden if you should hereafter be weary, or would cast it off again, you shall by no means do it: For since this King shall obtain the Crown, not only by God's Appointment, but by your own Choice or Election, it shall not be in your power again to depose him, since it is your own Act: And therefore *Samuel* tells them, That when they should cry unto the Lord in that Day, because of the King which they had chosen, the Lord would not hear them. And as long as this King kept himself within these bounds, I grant he was not to be resisted.

Yet nevertheless, this Place you have now cited, as it is very far from patronizing Tyranny, or all the Abuses of Regal Power; so neither do I think it was *Samuel's* meaning to make the Kings of *Israel* so absolute or irresistible, as that upon no account whatsoever the People might disobey or resist them, let them use this Power never so wickedly, nay, contrary to God's express Commands, and the Ends of all Civil Government: And therefore pray tell me; suppose, instead of these necessary Burdens, which they should be subject to when they had a King, *Samuel* had spoke thus to them: This King (whom you desire) shall prove an Idolater, and as cruel a Tyrant as *Pharaoh*, or any of the Kings of the *Philistines*, *Canaanites*, or any other Nations who so long tyrannized over you; and shall take away all your Estates, and Lives too, at his good pleasure, without any Crime, or legal Trial; and in short, will not only himself use you for Slaves, but sell you and your Children for Bondmen to the *Egyptians*, and other Nations, and shall lay such grievous Tributes and Burthens upon you, that you shall be scarce able to live under them.

Now can any Man think, if the *Israelites* had been really persuaded, that their King must have such an absolute and arbitrary Power, as a necessary and inseparable Prerogative of his Crown, they would ever have been so fond of such a Government, as to have cried out with one Consent; Nay, but we will have a King over us, that we may be like other Nations: But, sure, not to tyrannize over and enslave us, but that he may judge us, and go out before us, and fight our Battles. Or do you think, if they had had such a King as this, they would ever have long endured him? For that the Children of *Israel* did not conceive that their Kings had such an absolute and arbitrary Power over them, as to oppress them with Taxes, and to make their Yoke more grievous to them than they were able to bear, or to tyrannize over them at his good pleasure, appears plainly by the Story in the first of Kings, concerning the Children of *Israel's* assembling together at *Shechem*, to make *Rehoboam* King: And you'll find the Preliminary Conditions of his Government were these: All the Congregation of *Israel* came, and spake unto *Rehoboam*, saying, Thy Father made our Yoke grievous: Now therefore make thou the grievous Service of thy Father, and his heavy Yoke, which he put upon us, lighter, and we will serve thee. But see the Answer that *Rehoboam* made them, according to the Wisdom of his young Counsellors: My little Finger shall be thicker than my Father's Loins; and wherea my Father did lade you with a heavy Yoke, I will add to your Yoke; My Father has chastised
 you

you with Whips, but I will chastise you with Scorpions. And mark what follows upon this Answer : So when all Israel saw, that the King hearkened not unto them, the People answered the King, saying, What Portion have we in David? neither have we Inheritance in the Son of Jesse. To your Tents, O Israel : Now see to thine own House, David. So Israel departed unto their Tents. And it is farther said, So Israel rebelled against the House of David unto this day. Nor is this Action at all blamed or disapproved by the Scripture, or rebuked by any Prophet at that time ; for tho' the Word is here translated, they rebelled ; yet in the Hebrew it signifies no more than fell away from or revolted : And it is said before, that the King hearkened not to the People : For the Cause (which may be also translated REVOLUTION) was from the Lord, that he might perform his Saying, which he spake by Ahijah the Shilonite unto Jeroboam, when, in the Chapter before, the Prophet promis'd him the Kingdom of the Ten Tribes, and that God would rend them out of the hand of Solomon (i. e. his Posterity) and give them unto him, who thereupon had a Right to them : And that, upon his being made King by the People, he had also a Right to their Obedience, is as evident ; since to continue in a State of Rebellion towards one King, and an Obligation to obey another, are absolutely inconsistent in the same Subject, as I have already proved at our second Conference. And therefore I cannot but here take notice of that rational Account which the Earl of Clarendon, in his Survey of the Leviathan, which you before quoted, gives of this Revolution. " Nor did the People (viz. of Israel) conceive themselves liable to those Imposi-
" tions ; as appears by the Application they made to Rehoboam upon the Death
" of Solomon, that he would abate some of that Rigour his Father had exercised
" towards them, the rough Rejection of which, contrary to the Advice of his
" wisest Counsellors, cost him the greatest part of his Dominions : And when
" Rehoboam would by Arms have reduced them to Obedience, God would not
" suffer him, because he had been in the fault himself."

M. After this extravagant way of arguing, whenever the Subjects of any Nation shall think themselves too much oppress'd with Taxes, or other Grievances, above what they are able to bear, if they are not eas'd by the King or Supreme Magistrates upon the first Petition, they may presently cast off that Power they were under, and set up another, that would govern them upon cheaper Terms : For if the People of Israel had this Right, why may not all other Nations claim the same ? And this Doctrine, however comfortable it might be to the People, I am sure it would be very mischievous to all the Monarchies and Commonwealths in the World ; and it is likely that the Subjects of the French King, nay States of Holland, and other Princes, would quickly take the first Opportunity, either to make their Princes and States to tax them no more than they please themselves, or else they may presently cry with the Israelites, To thy Tents, O Israel. Nor can I see how the King and Parliament in England would be in a much better Condition in relation to the People they represent, should they impose greater Taxes than they thought they could afford to pay. And this Privilege you give the Israelites seems to be clean contrary to what you laid down at our last Conference, wherein you excepted great Taxes and Tributes to Princes or States, as no just Cause of Resistance, or taking up Arms : And therefore I think I may very well maintain the old Doctrine about this matter, and that tho' God did rend the Kingdom from Rehoboam, and bestow it upon the Son of Nebat, whom also when the People had made King they were obliged to obey, because it was God's Will it should be so, who gives and takes away Kingdoms from whomsoever he pleases ; yet doth not this at all justify the Rebellion of the Israelites, or Jeroboam's Usurpation of his Master's Kingdom ; since God oftentimes makes use of this Rebellion of the People to execute his Judgment upon a sinful Prince and Nation : And therefore it is very remarkable, that after this Rebellion of the Israelites from the House of David they never prospered ; but, by their Kings still falling one after another into the same Idolatry, God at last was so highly provoked against them, that he suffered them to be carried away Captives into a strange Land, near two hundred Years before the Tribes of Judah and Benjamin underwent the same Fate for the like Crime.

F. I hope you will not be in a passion, because I have brought this Instance of the Israelites Defection from Rehoboam, as an Example of the Right that Subjects may have, in those Cases I have put, to resist or cast off those Supreme Powers that God had once set over them : For I do confess, Divines and other Authors are

are much divided about this Action of the *Israelites*, some maintaining it to be well done, and in pursuance to God's Will, and others holding it to be downright Rebellion. And therefore I shall not positively assert either the one or the other, much less that Subjects may rebel whensoever they conceive themselves overtax'd: But thus much I think I may safely affirm, that if the *Israelites* had no Right upon any score whatsoever to resist, I cannot see why *Rehoboam* might not have made them, if he had pleas'd, as errant Slaves as ever their Ancestors were in *Egypt*; and what he else meant by saying, *instead of Whips to chastise them with Scorpions* (which were a sort of thorny Rods, with which the *Jews* corrected their Slaves and Malefactors) I cannot understand. And as for Taxes, tho' I confess there is no setting any exact Measure to them, since no Man can positively define what the Exigences of a State may require; and I think no good Subjects ought to deny to contribute as much as ever they are able to afford, to maintain the Government they live under, as long as they receive the Protection of it: So, on the other side, should the Supreme Power of any Nation (where the People are not meer Slaves) under the pretence of laying necessary Taxes for the Maintenance or Preservation of the Government, be constantly exacting from the People more than they are able to pay: As if, for example, they should out of every Man's Estate take *Nineteen Parts*, and leave but the *Twentieth* for the Subsistence of those that own it; I do not think, in that case, the People were obliged in conscience to pay it, and might in such case lawfully resist those Officers that should come to levy it by force.

M. I could have argued farther against what you have now said, concerning this Right of the People of *Resisting*, in case of extravagant or intolerable Taxes; but since it is not to the Subject in hand, I shall refer it to another time: And therefore, to return where I left off, I shall in the next place shew you, how sacred and irresistible the Persons and Authority of Kings were under the *Jewish* Government; and there cannot be a plainer Example of this than in the Case of *David*. He was himself anointed to be King after *Saul's* Death; but in the mean time he was grievously persecuted by *Saul*, who pursued him from one Place to another, with a design to take away his Life. How now doth *David* behave himself in this Extremity? What course doth he take to secure himself from *Saul*? Why he takes the only course that is left to a Subject; he flies for it, and hides himself from *Saul* in the Mountains and Caves of the Wilderness, and when he found he was discovered in one place, he removes to another: He kept Spies upon *Saul* to observe his Motions, not that he might meet him to give him battle, or to take him at an advantage, but that he might keep out of his way, and not fall unawares into his hands.

Well, but this was no thanks to *David*, you'll say, because he could not do otherwise: He was too weak for *Saul*, and not able to stand against him; and therefore had no other Remedy but Flight: But yet we must consider, that *David* was a Man of War, he slew *Goliath*, and fought the Battles of *Israel* with great Success: He was an admired and beloved Captain, which made *Saul* so jealous of him; the Eyes of *Israel* were upon him for their next King, and how easily might he have raised a potent and formidable Rebellion against *Saul*? But he was so far from this, that he invites no Man to his assistance; and when some came uninvited, he made no use of them in an offensive or defensive War against *Saul*: Nay, when God delivered *Saul* twice into *David's* hands, that he could as easily have killed him as have cut off the Skirts of his Garment at Engedi, or as have taken that Spear away which stuck on the Ground at his Bolster, as he did in the Hill of *Hachilah*; yet he would neither touch *Saul* himself, nor suffer any of the People that were with him to do it, tho' they were very importunate with him to let them kill *Saul*; nay, tho' they urged him with an Argument from Providence, that it was an Evidence, that it was the Will of God that he should kill him, because God had now delivered his Enemy into his hands, according to the Promise he had made to *David*. We know what use some Men have made of this Argument of Providence to justify all the Villanies they had a mind to act; but *David*, it seems, did not think, that an Opportunity of doing evil gave him a Licence and Authority to do it. Opportunity, we say, makes a Thief, and it makes a Rebel and a Murderer too. No Man can do any Wickedness which he has no Opportunity of doing; and if the Providence of God, which puts such Opportunities into Mens hands, might justify the Wickedness they commit, no Man can be charge-
able

S. C. R. 28,
29.

1 Sam. 24.
— 26.

— 24. 4.
— 26. 8.

It. p. 30.

able with any Guilt, whatever he does ; and certainly Opportunity will as soon justify any other Sin, as Rebellion, and the Murder of Princes. We are to learn our Duty from the *Law of God*, not from his *Providence* ; at least this must be a settled Principle, that the *Providence of God* will never justify any Action, which his *Law* forbids.

And therefore, notwithstanding this Opportunity which God has put into his hands to destroy his Enemy, and to take the Crown for his Reward, *David* considers his Duty, remembers, that tho' *Saul* were his Enemy, and that very unjustly, yet he was still the Lord's Anointed. *The Lord forbid*, says he, *that I should do this unto my Master, the Lord's Anointed, to stretch forth my Hand against him, seeing he is the Lord's Anointed.* Nay, he was so far from taking away his Life, that his Heart smote him for cutting off the Skirt of his Garment. And we ought to observe the Reason *David* gives, why he durst not hurt *Saul*, because he was the Lord's Anointed ; which is the very Reason the Apostle gives in the *Romans*, because the *Rom. 13. 1,* Powers that are, are ordained of God, and he that resisteth the Power, resisteth the Ordinance of God. For to be anointed of God signifies no more than that he was made King or ordained by God. For this external Unction was only a visible Sign of God's Designation of them to such an Office ; and it is certain they were as much God's Anointed without this visible Unction as with it. *Cyrus* is called God's Anointed, *Isa. 45. 1.* tho' he never was anointed by any Prophet, but only designed for his Kingdom by Prophecy ; and we never read in Scripture, that any Kings had this external Unction, who succeeded in the Kingdom by Right of Inheritance, unless the Title and Succession were doubtful ; and yet they were the Lord's Anointed too, that is, were plac'd in the Throne by him. So that this is an eternal Reason against resisting Sovereign Princes, that they are set up by God, and invested with his Authority ; and therefore their Persons and their Authority are sacred.

F. I am so far from differing with you in what you have said concerning this Example of *David* towards *Saul*, tho' his Enemy, that I think it ought to be a Pattern to every single private Man, tho' never so great, in a Kingdom or Commonwealth, how to comport himself towards the Supreme Powers, if he himself alone be unjustly persecuted by them either in his Life or Estate, that is, to fly if he can, tho' with the Loss of all his Estate, rather than resist. Tho' there are some Circumstances in this Story of *David*, that make it evident that he did not think a defensive War against those Cut-throats that *Saul* might send to kill him unlawful ; and so much *Dr. Feayn* himself, in his first Discourse call'd *Resolving of Conscience*, &c. against Resistance of the Higher Powers, acknowledges : For *David*, when he fled from *Saul*, made himself Captain of four hundred Men, which Number soon encreased to six hundred, and still every day grew more by Additions. *1 Sam. 22. 2.* Now why should he entertain those Men, but to defend himself against the Forces of *Saul* ? that is, to make a defensive War, whenever he was assaulted by them. *23. 13.* *1 Chron. 12. 1.*

M. I think I can give you a sufficient Answer to this, and therefore you must observe, that *David* invited none of these Men into him ; but they came as Volunteers after a beloved Captain and General : Which shews how formidable he could easily have made himself, when such Numbers resorted to him of their own accord. *S. C. R. p. 32.*

When he had them, he never used them for any hostile Acts against *Saul*, or any of his Forces : He never stood his ground when he heard *Saul* was coming, but always fled, and his Men with him ; Men who never were us'd to fly, and were very ready to have served him against *Saul* himself, would he have permitted them. And I suppose you will not call it a defensive War, to fly before an Enemy, and to hide themselves in Caves and Mountains ; and yet this was the only defensive War which *David* made with all his Men about him : Nay, all that he would make, and all that he could make, according to his professed Principles, that it was not lawful to stretch out his Hand against the Lord's Anointed. And when these Men are pursued, as *David* was, by an enraged and jealous Prince, I will not charge them of Rebellion, tho' they fly before him by thousands in a Company.

Yet there was sufficient Reason why *David* should entertain these Men, who voluntarily resorted to him, tho' he never intended to use them against *Saul* : For some of them served for Spies, to watch *Saul*'s Motions, that he might not be surprized by him, but have timely notice to make his Escape. And the very Presence of such a Number of Men about him, without any hostile Act, preserved

him from being seiz'd on by some officious Persons, who otherwise might have delivered him into *Saul's* hands. And he being anointed by *Samuel* to be King after *Saul's* Death, this was the first Step to his Kingdom, to have such a Retinue of valiant Men about him; which made his Advancement to the Throne more easy, and discouraged any Oppositions, which might otherwise have been made against him; as we see it proved in the event, and have reason to believe that it was thus ordered by God for that very end. It is certain that *Gad* the Prophet, and *Abiathar* the Priest, who was the only Man who escaped the Fury of *Saul*, when he destroyed the Priests of the Lord, were in *David's* Retinue; and that *David* enterprized nothing, without first asking Counsel of God: But he who had anointed him to be King now draws Forces after him, which after *Saul's* Death should facilitate his Advancement to the Kingdom.

F. I cannot think your Answer to this Objection satisfactory; for first, it is evident, that when *David* was at the Cave of *Adullam*, his Brethren and all his Father's House, as soon as they heard it, went down thither to him: And tho' it be not expressly said, that he sent for any to come to his Assistance, yet it is plain he refused none that came; and to what purpose should he make use of so many as 400 or 600 Men, unless it were to defend himself against those Men that *Saul* might send against him, since half a score or twenty Persons had been enough to have served for Spies? And if he had thought himself obliged only to run away, three or four Servants had been enough in conscience to have waited on him in any neighbouring Country: But that *David* thought it no Sin to defend himself from the Violence of those whom *Saul* should send to kill him, is plain from what *1 Sam. 22. 1.* he says to *Abiathar*, upon his Flight unto him after the Death of his Father: *Abide thou with me; fear not: for he that seeketh my Life, seeketh thy Life, but with me thou shalt be in safeguard.* And if *David* had not meant by these Words to have defended *Abiathar's* as well as his own Life, if assaulted, and without a possibility of escaping, it had been very cold comfort for *David* to have only assur'd him, that he should be in safeguard with him till the first Assault that should be made upon them, but that then he should shift for himself; for as for his own part, he would rather permit his Throat to be cut by the King's Officers or Soldiers than resist them.

And therefore, tho' I own that it was not lawful for him to *stretch out his Hand against the Lord's Anointed*; since I do not allow any private Subject to kill even *Tyrants*, unless in a State of actual War or Battel, wherein they are Aggressors, nor then neither, if it can possibly be avoided: Yet do I not find it at all unlawful for *David*, or any other private Man, to defend his own Life against such Assassinares as his Prince may send against him; so it may be done without a Civil War, or endangering the Peace of the Commonwealth. And so much you your self, tho' coldly, seem to yield, when you say, that the very Presence of such a number of Men about *David*, without any hostile Act, preserved him from being seiz'd on by some officious Persons, who otherwise might have delivered him into *Saul's* Hands: For I cannot think that *David* would have been at the trouble of keeping so many Men only for shew, and a Terror to those officious Persons you mention, without resisting of them, if there had been occasion.

And tho' you tell me, that his being anointed by *Samuel* to be King after *Saul's* Death, was the first step to the Kingdom, to have such a Retinue of valiant Men about him; which made his Advancement to the Throne so much the easier, and discouraged any Opposition which might have been made against him, and that we see it proved so in the Event; and therefore have reason to believe, that it was thus ordered by God to that very End, I must take the liberty so far to differ from you.

For first, I desire to know by what Authority *David* could list 6 or 700 Men in Arms in *Saul's* Territories? and whether, according to your Doctrine, they were not Rebels for joining themselves with one who was declared a Traytor by the King? And tho' you say it was thus ordered by God, I grant indeed it was; yet doth it not appear that it was done by any Divine Revelation to *Nathan* or *Abiathar*, but only by the ordinary Course of his Providence, like other things in the World: And therefore it is no fair way of arguing for you to affirm, that whatever *David* did in the matter of his own Defence, contrary to your Principles, he must needs do it by express Order from God, of which the Scripture is wholly silent: Much less doth it appear from the Story, that these Men whom *David*

David kept with him, were only to facilitate his attaining the Kingdom, as you affirm; since the Scripture mentions no such thing, only that after *Saul's Death* ^{2 Sam. 2. 4.} he went up by God's Command to *Hebron*, with the Men that were with him; and thither the Men of *Judah* came, and there they anointed David King over the House of *Judah*. But 'tis no where mention'd, that these Men were of any use to David for the obtaining of the Crown, since the Tribe of *Judah* would have made him King, tho' these Men had not been with him: For what could 600 or 1000 Men do against so vast a Multitude as the whole Tribe of *Judah*? And therefore it is evident, that these Forces were for no other End than his own defence.

And tho' you make very light of this State of War in which David was, in relation to *Saul*; yet pray tell me, supposing that the Duke of *Monmouth* had really been (as he pretended) the legitimate Son of King *Charles II.* but by some particular Disgust of his Father, or by the Intrigues of his Competitor, the Duke of *York*, had been forced to fly into *Scotland*, and there to have defended himself with 1000 or 1500 of his Tenants and Followers, tho' without fighting the King's Forces that should have been sent against him, but flying into the *High-lands*, and had there maintain'd himself, as David did, by Free Quarters or Contribution of the Inhabitants, till his Father died; would not this have been cried out upon in all the Pulpits in *England*, as a most *Horrid Rebellion* of a Son and a Subject against his King and Father, tho' he had never done any Act of Hostility against his Forces, but always fled from them? And yet he, being Heir apparent to the Crown, might have pleaded as well as David, that he kept these Soldiers about him, only to keep himself from being murdered by those officious Persons, whom his Father or Uncle might send to apprehend him, and to have such a Retinue of valiant Men about him, as might render his Advancement to the Throne more easy, whenever his Father should die.

I shall not urge, as a farther Proof of the Lawfulness of David's Resistance of *Saul's* Forces, his Intention to have staid in *Keilah*, and to have fortified it against *Saul*, had not he been informed, that the Men of that City would have saved themselves by delivering him up to *Saul*; since, I confess, it doth not certainly appear by the Text, whether David would have staid any longer there than till *Saul* had approach'd near that Place; whether the *Keilites* would have delivered him up, or not. Much less shall I urge that other Example, which some Men make use of, of David's going to the last Battle against *Saul* with *Achish*, King of the *Philistines*: For tho' it be plain he march'd with them as far as *Aphek* in the Tribe of *Issachar*; yet I confess it is not certain, whether he really intended to have assisted them or not, in this War against his Country; since he might either have gone over to *Saul* at the Beginning of the Battel, or else have stood neuter; tho' neither of them would have been very honourable, or consonant with David's Character: Therefore I shall say nothing of this, since the Lords of the *Philistines*, for fear he should prove an Adversary to them in the Battel, made him retire again into the Land of the *Philistines*; tho' he seem'd to be very much troubled to be so distrustful, that he might not fight against the Enemies of that King, who had so good an Opinion of him. And therefore I pray you will proceed to those other Examples you have to produce out of the Old Testament. ^{1 Sam. 23.}

M. Well, since you are not satisfied with this Instance of David, (tho' I am glad you allow the Persons, even of Tyrannical Princes, to be sacred) therefore to proceed in the Jewish History, *Solomon*, who succeeded David in his Kingdom, did all those things which God had expressly forbid the King to do. He sent into *Egypt* for Horses: He multiplied Wives, and loved many strange Women (together with the Daughter of *Pharaoh*) Women of the *Moabites*, *Ammonites*, &c. He multiplied Silver and Gold. And tho' God (who is the only Judge of Sovereign Princes) was very angry with him, and threatens to rend the Kingdom from him, which was afterwards accomplish'd in the Days of *Rehoboam*; yet this did not give Authority to his Subjects to rebel. If to be under the Direction and Obligation of Laws makes a Limited Monarchy, it is certain the Kingdom of *Israel* was so. There were some things which the King was expressly forbid to do, as you have already heard; and the Law of *Moses* was to be the Rule of his Government, the standing Law of his Kingdom: And therefore he was commanded, when he came to the Throne, to write a Copy of the Law with his own Hand, and to read in it all his Days, that he might learn to fear the Lord his God, and to keep all the Words of his Law, and these Statutes, to do them. And yet being a Sovereign Prince, if he broke these ^{S.C.R. p.37.} ^{1 Kings 11.} ^{Deut. 17. 18, 19, 20.}

Laws, God was his Judge and Avenger ; but he was accountable to no Earthly Tribunal. Nor do we find, tho' there were so many wicked and idolatrous Kings of *Judah*, who broke all the Laws of God given them by *Moses*, that ever any of the Priests or Prophets stirred up the People to rebel against them for it.

F. Neither of these Instances do reach the Case in hand ; for I grant, that neither the Breach or Non-observance of these Precepts enjoined the Kings of *Israel* by God, nor yet their open Idolatry, were a sufficient Cause for their taking up Arms, or resisting their Kings in so doing ; since these were Offences only against God, and in which the People had nothing to do, those being no part of that tacit or implicit Compact of Protection and Preservation, that goeth along with all Kingdoms and Supreme Powers whatsoever. And I have already excepted out of the Causes of *Resistance*, or taking up Arms, the Prince's being of a different Religion from that of his Subjects. And tho' I must own, that the Kings of *Israel* were under the Direction or Obligation of the Law of *Moses*, and so were limited *Monarchs* ; yet this Limitation was not from the People, but from God, whose Business it was to revenge the Breach of it as often as they offended, and if they broke those Laws, God only was their Judge and Avenger (as you your self very well observe) who never failed severely to punish this Breach of his Laws.

Yet were not the People of the *Jews* always so nice and temperate as you make them : For, besides the Example of *Rehboam*, which I have formerly made use of, Chap. 25.27. you will find in the second of *Chronicles* concerning *Amaziah*, who when he turned away from following the Lord, *They (viz. the People) made a Conspiracy against him in Jerusalem, and he fled to Lachish ; but they sent to Lachish after him, and slew him there, and made his Son Uzziah King in his stead.* Nor do we read that any were punish'd for killing him, as *Amaziah* put to Death the Servants of his Father King *Joash*, for conspiring against him, as it is related in the tenth Chapter of the second Chap. 21.10. Book of *Kings* : And you'll find in the same Book, that the City of *Libna* revolted (which sure is the highest degree of Resistance) from that wicked King *Jehoram*, who had slain all his Brethren with the Sword, and walked in the way of the Kings of *Israel*, as did the House of *Ahab*, and wrought that which was evil in the sight of the Lord, &c. And therefore it is said expressly in the Text, that the City of *Libna* revolted from his Hand, because he had forsaken the God of his Fathers. I bring not these Instances to justify Rebellion, but to let you see that it was sometimes practised amongst the *Jews*, tho' you affirm the contrary.

2 Chron. 26. But much more lawful was the Resistance, which *Azariah*, and the 80 Priests that were with him, made against King *Uzziah*, when he would have burnt Incense in the Temple. Pray turn with me to the Place, and read what is there said : And they (viz. the Priests) withstood *Uzziah* the King, and said unto him, It appertaineth not unto thee, *Uzziah*, to burn Incense unto the Lord, but to the Priests the Sons of *Aaron*, that are consecrated to burn Incense. Go out of the Sanctuary, for thou hast trespassed, neither shall it be for thine Honour, &c. And when he persisted therein,

Ver. 18. and took the Censer in his Hand to burn Incense, and that thereupon the Leprosy arose in his Forehead, the Priests thrust him out of the Temple. The LXX render it, ἐξήσαν ἐπὶ Ὀρίαν, i. e. they resisted him. *Josephus* says, they drove him out in haste. So that you see they went somewhat farther than *Salomon's* Question, *Who may say to a King, what doest thou ?* And, which is more remarkable, they withstood him before the Leprosy rose upon his Forehead ; and no doubt but they would have done the same to him, whether that Judgment had happen'd or not, since he went about to usurp the Priests Office ; it not being so much as lawful for him, that was no Priest, to set his Foot within the Temple.

But if you look into the History of the Kings of *Israel* after their Division from *Judah*, they are so far from teaching us these Lessons of Passive Obedience and Non-resistance, that you will scarce find any other manner of Succession amongst them, but the killing of one King, and the setting up another ; and *Jehu*, for rebelling against and destroying the House of *Ahab*, had the Crown entailed by God's Promise to his Posterity unto the fourth Generation. And tho' I do not produce any of these Examples as fit for our Imitation at this day (since what *Jehu* did was done by God's express Warrant and Command) yet I think they are sufficient Evidences, that neither the Person nor Power of the Kings of *Judah* or *Israel* were always look'd upon as so sacred and irresistible by their Subjects, as you suppose.

M. I am glad you are so ingenuous to confess, that most of these Examples you have brought of the Resistance and Murders committed by the *Jews* and *Israelites* upon

Vide S. Chry-
sost. E. log. a
de Imperio &
Potestate ;
where you'll
find, that he
both owns
and justifies
this Resis-
tance in the
High-Priest.

2 Kings 10.
30.

upon their Kings were not lawful, or can be proposed for the imitation of Christian Subjects; and if so, pray make what other use of them you please, since a *facto, ad Jus non valet Consequentia*: I cannot deny but that the Succession of the Kings of Israel, after Nadab, the Son of Jeroboam, was very confused, God stirring up some or other to rebel against them and make them away, as a Punishment for their former Rebellion and Idolatry: Thus Baasha killed Nadab the Son of Jeroboam, and reigned in his stead; and for this, and his other Sins, God threatened Evil against Baasha, and against his House; Zimri slew Elah the Son of Baasha, but he did not long enjoy the Kingdom which he had usurped by Treason and Murder, for he reigning but seven Days in Tirza, which being besieged and taken by Omri, he went to the Palace, and burned the King's House over him with Fire, and died. S. C. R. p. 35.
1 Kings 15.
25, 26, 27.
2 Chron. 16. 7.
Jer. 18.

This Example Jerebel threatened Jehu with, Had Zimri Peace who slew his Master? And yet Nadab and Elah were both of them very wicked Princes; and if that would justify Treason and Murder, both Baasha and Zimri had been innocent; but as for the Example of Jehu's killing his Master King Joram, (you say) it was by the particular Command of God, and is no more to be produced as an Example for Rebellion, and the Murder of Princes by the General of their Armies, than that because the Children of Israel had a Power given them by God, to extirpate and destroy those seven Nations, whose Countries God had given them to inherit, therefore they had a like Right to destroy all other Nations whatsoever, that lay near them: And therefore those Actions in Scripture, which are sometimes commanded by God, for the bringing about the great designs of his Providence, by those humane Means that may seem unjust to us, are not to be produced for Authorities, nor alledged as Examples.

I so far agree with you, and do by no means allow that particular private Men, of what Condition soever they are, should disturb the Commonwealth and murder their lawful Princes, tho' Wicked or Idolatrous, only to satisfy their own private Zeal or Ambition, and to set up themselves, who perhaps are altogether as bad or worse than him they depose or make away. But yet I think I might very well produce these, to convince you that there were no better Examples for Loyalty or Passive Obedience among the Jews than other Nations; and therefore that your Examples out of the Scripture do hitherto prove insignificant; yet I cannot but take notice of one passage, wherein, by following the ordinary English Translation, you fall into a great mistake, where you make Baasha to be slain by Zimri, because he killed Nadab; which as it is there rendered in the English is false, for the Words in our Translation are, *because he killed him*, viz. Jeroboam, to whom it there immediately relates; which is false, for Baasha did not kill Jeroboam, but Nadab his Son: Neither was it suitable to God's Justice to destroy Baasha for that which he himself had ordained him to do; for God, by Jehu the Prophet, said to Baasha; *Forasmuch as I exalted thee out of the Dust, and made thee Prince over my People Israel, and thou hast walked in the way of Jeroboam, and hast made my People Israel to Sin, to provoke me to anger by their Sins*: And therefore the Text concludes this Narration with these Words, *That the Word of the Lord came against Baasha, and against his House, even for all the Evil which he did in the sight of the Lord, in provoking him to anger with the work of his Hands in being like the House of Jeroboam*. But the Words which immediately follow, *and because he killed him* (i. e. Jeroboam) cannot be truly render'd in our English Translation, for the Reason already given; and therefore the best Criticks upon this Place translate it thus, leaving out *and, therefore he* (viz. the Lord) *smote him*; (i. e. Nadab) *by the Hand of Baasha*; whereas our Translation makes the Scripture to contradict itself. I have no more to observe from this History of the Kings and Chronicles; and therefore pray proceed to what other Testimonies you have to produce.

M. Well, I think I can make it much more plain from other Examples and Precepts out of Scripture, that the Jews were not only under high Obligations to be subject to the Higher Powers, after they were carried Captives to Babylon; but also not to resist them, tho' they went about to exercise their Power never so cruelly and tyrannically, even to the Destruction of the whole Nation. Now the Prophet Jeremiah had given them an express Command; *Seek the Peace of the City whither I have caused you to be carried away Captives, and pray to the Lord for it; for in the Peace thereof you shall have Peace*: Which made it a necessary Duty to be subject to these Powers under whose Government they lived. And accordingly we find that

S. C. R. p. 35.

Jer. 29. 7.

Esther 6. 2.
S. C. R. p.
40, 41.

that *Mordecai* discovered the Treason of *Bigthana* and *Teresh*, two of the King's Chamberlains, the Keepers of the Door, who sought to lay hand on the King *Ahasuerus*; and how numerous and powerful the *Jews* were at this time, and what great disturbance they could have given to the Empire, appears evidently from the Book of *Esther*.

Esther 6. 15,
16, 17.

King *Ahasuerus*, upon the suggestions of *Haman*, had granted a Decree for the Destruction of the whole People of the *Jews*; which was sent into all the Provinces, written and seal'd with the King's Ring. This Decree could never be reversed again, for that was contrary to the Laws of the *Medes* and *Persians*: And therefore when *Esther* had found Favour with the King, all that could be done for the *Jews*, was to grant another Decree for them to defend themselves; which accordingly was done; and the effect of it was, That the *Jews* at *Shusan* slew 300 Men, and the *Jews* of the other Provinces slew 75000, and rested from their Enemies: Without this Decree *Mordecai* did not think it lawful to resist (which yet was a Case of as great Extremity and barbarous Cruelty as could ever happen) which made him put *Esther* upon so hazardous an Attempt, as to venture into the King's Presence without being call'd, which was Death by their Law, unless the King should graciously hold out the Golden Scepter to them; yet when the *Jews* had obtained this Decree, they were able to defend themselves and to destroy their Enemies: Which is as famous an Example of *Passive Obedience* as can be met with in any History.

Esther 4. 11.

Dan 5. 18,
19.

And pray see here what the Prophet *Daniel* acknowledges to *Belteshazzar*. The most high God gave *Nebuchadnezzar* thy Father a Kingdom, and Majesty, and Glory, and Honour: And for the Majesty that he gave him, all People, Nations and Languages trembled and feared before him: Whom he would he slew, and whom he would he kept alive, and whom he would he set up, and whom he would he pulled down. And if these Heathen Kings received such a Power from God, as the Prophet here affirms, *St. Paul* has made the Application of it, that he that resisteth, resisteth the Ordinance of God: And I think these Examples may serve out of the Old Testament, and therefore I shall conclude with the Saying of the Wise Man, who was both a Prophet and a King: Where the Word of a King is, there is Power, and who may say unto him, What doest thou?

Ecc. 8. 2, 3,
4.

- F. Tho' this last Proof be the strongest you have yet brought, yet I think it will not reach the Point in question; to prove that no Resistance whatsoever, tho' for saving the Lives of a whole Nation, can be lawful. I grant indeed, that the Command of the Prophet *Jeremiah*, of praying for the Peace of the City whither they were carried away Captives, was to be obeyed, being obliged to do it, not only by the Laws of Nature, and in regard of those Benefits of Protection, and enjoying the free Exercise of their Religion and Liberties without being made Slaves, tho' they had been carried Captives; which was no more than removing them out of one Country and settling them in another, according to the Custom of the Eastern Princes of those Times; when they would, by removing the best and greatest of the People out of a conquer'd Country, prevent their rebelling against them, as they had done before; but that they enjoyed a Property in their Lands and Estates after their Captivity, is certain, by the Prophets commanding them to build and plant Vineyards in the Country of *Babylon*, during the 70 Years Captivity foretold by him from God. So likewise I grant it to be a necessary Duty in Subjects, tho' Strangers, to be Faithful and Obedient to those Princes and States under whose Governments they live; and therefore *Mordecai* no doubt perform'd his Duty, when he discovered the Treason of the King's Chamberlains that thought to kill him.

Esther 8. 11.

But to come to your main Argument, that it was unlawful for the whole Nation of the *Jews* to resist those who were impowered, by the Decree of King *Ahasuerus*, to massacre and destroy them, I shall not dispute with you about the Matter of Fact, as you have related it, but only in this particular; that whereas you suppose, till the King had issued out a second Decree, wherein he granted the *Jews* which were in every City to gather themselves together, and to stand for their Lives, to destroy, to slay, and cause to perish all the Power of the People and Province that should assault them, &c. and to take the Spoil of them for a Prey; without which Decree, you say, *Mordecai* did not think it lawful to resist, tho' it was a Case of as great Extremity as could ever happen; and that therefore *Esther* was put upon so hazardous an Attempt, as to venture to obtain this Decree, tho' with the Peril of her Life; but

but that when they had once obtain'd it, they were then, and not before, enabled to defend themselves, and destroy their Enemies. In answer to which, I must needs tell you, that you do not fairly represent the latter part of this Story; for it nowhere appears in the Text (tho' you are pleased to add it) that *Mordecai* did not think it lawful for the *Jews* to resist till this Decree was obtained; for it is only there said, *That he sent Esther to the King, and as soon as she came into his Presence, she fell down at his Feet, and besought him with Tears to put away the Mischief of Haman the Agagite.* (Pray read the Words) *And she said, if it pleases the King, and if I have found favour in his sight, and the thing seems right before the King, and I be pleasing in his Eyes, let it be written to reverse the Letters devised by Haman the Son of Hammedatha the Agagite, which he wrote to destroy the Jews which are in all the King's Provinces.* By which you may see that *Esther's* Request was not for a Liberty to defend themselves, (as you suppose) but only to try if she could get the King to reverse the first Decree obtained by *Haman* to destroy them. But because the King's Decree, when once issued out, was not to be reversed; therefore he issued this second Decree, to give the *Jews* a Legal or Civil Power to gather themselves together, and stand upon their Defence against all that should assault them; which was so far obeyed, that the Rulers of the Provinces and other Officers of the King, instead of destroying, helped the *Jews*, because (says the Text) *the fear of Mordecai fell upon them.*

Esther 8. 5.

Chap. 9. 3.

So that tho' I own this Decree gave them a legal Power to stand upon their defence; and did likewise hinder the King's Officers from heading the People, and putting the first Decree for their Destruction in Execution, as otherwise they would have done, had it not been for this last, and for that great Power which they perceived *Mordecai* had at Court; yet doth it not therefore follow, that it was before that absolutely unlawful for the whole *Jewish* Nation to have defended their Lives against those Officers or others who would have gone about to destroy them, and have totally extirpated their Nation. So that I take this Decree not to confer any new Right in the People of the *Jews* to defend themselves, but only to be a Confirmation of that natural Right of Self-defence, which all Nations, and every particular Member of Mankind have to preserve themselves: And tho' I grant that particular Persons are often obliged to give up this Right for the publick Peace and Safety of the Commonwealth; yet doth not this Law extend to whole Nations, or such Bodies of People without which the Commonwealth cannot well subsist.

And therefore I leave it to any unprejudiced Person, to judge whether it had not been better that the *Jews* should have thus resisted and saved their Lives, tho' without this second Decree, which only discouraged the King's Officers and others from falling upon them, than that all God's peculiar People should have lain at the Mercy of their Enemies, to be destroyed according to the first cruel Decree.

But farther to convince you that the *Jews*, after the Captivity, did not think it unlawful to make use of defensive Arms against cruel and persecuting Tyrants, who went about to destroy their Religion and Nation; it is apparent from the famous Example of the Priest *Mattathias*, with *Judas Maccabeus* and the rest of his Sons, who successively headed the People of the *Jews* in that obstinate and noble Resistance which they made against *Antiochus Epiphanes*, tho' then their Sovereign, who when he had prophaned the Temple, and would have forced the *Jews* to renounce their Circumcision, and to have sacrificed to Idols, under pain of Death; they joyned together and resolved to defend themselves, and to stand up for their Religion and Nation, then ready to be destroyed: And you find by the History, as it is related in the Books of the *Maccabees* and *Josephus*, that God did bless those Arms with Success, which they had taken up in their own defence, against a Prince infinitely more Powerful than themselves, who, with his Predecessors, had been their Sovereigns for above 130 Years. And tho' *Antiochus* died long before the end of the War, yet did they still prosecute it against his Successors: Nor did they ever make Peace with them, till *Jonatham*, Brother of *Judas* (who had before recovered and purified the Temple) was acknowledged High-Priest by *Alexander* the pretended Son of *Epiphanes*, and that they had cast off that Yoke of Subjection which they were under to the Kings of *Syria*, and had settled the Government of their Nation upon the Princes of the *Asmonaan* Race, in gratitude of that Deliverance they so justly owed to their Piety and Courage; and

See the first and second Books of the Maccabees.

which

which continued in this Family till the Conquest of *Judea* by *Pompey*, after 106 Years free Enjoyment of it : So that it is plain, the *Jews*, before the coming of *Christ*, both Priests and People, did not think it unlawful to defend their Lives and Religion, in case of great Extremity ; and that our Saviour *Christ* hath any where, by his Gospel, retrenched whole Nations of that Liberty, lies upon you to prove.

But to conclude ; as for the Text you have cited out of the *Proverbs*, that will do you as little Service ; for tho' I grant, it is true, that no Man can say to an absolute King or Monarch, *What dost thou ? i. e.* call him to account as his Superior ; yet doth it not therefore follow, that a whole People or Nation have no Power to defend themselves, in any Case whatsoever, against his unjust Violence or Tyranny ; this not being the Act of a Superiors, but an Equal (as I have already said) nor any Political, but a Natural Power.

M. I confess this is the notablest Example of Resistance that you have brought yet. But I think it may be easily answered, if we suppose with *Josephus* and other Authors, that tho' *Alexander* the Great was certainly possessed of *Palestine*, by Right of Conquest, and the Submission of the High-Priest *Jaddus* unto him ; yet his chief Captains conspiring together, made such a scrambling Division of the Empire among themselves as they could, every one almost seeking how he might suppress the rest, and attain the whole alone for himself ; so as thereupon the *Jews* were as free from the *Macedonians*, as any other of their bordering Neighbours ; none of the said Captains having any lawful Interest or Title to *Judah* : But that which turned to the Benefit of some others, brought a great Detriment (for want of Ability) unto them ; for one of the said Captains, viz. *Antiochus*, having gotten to himself a very great Kingdom in *Syria* ; and another, viz. *Ptolomy*, in *Egypt*, the *Jews* dwelling betwixt them both, were miserably (on every side) vexed by them : Sometimes the *Egyptians*, by Oppression and Force, brought them under their Subjection, and imposed great Tributes upon them ; and sometimes the *Syrians* growing mightier than the *Egyptians*, did likewise greatly afflict them ; especially in the Reign of *Antiochus Epiphanes*, whose Invasion and Government was most unjust and Tyrannical : He shed innocent Blood on every side of the Sanctuary ; spoiled the Temple, erecting in it the Abomination of the Gentiles, and caused it to be named the Temple of *Jupiter Olympius*. Not to mention the Prophanation of the Law, and unspeakable Cruelties exercised upon those who refused to offer Sacrifice unto Idols ; until *Mattathias*, moved with the monstrous Cruelty and Tyranny of the said *Antiochus*, made open Resistance, the Government of that Tyrant being not then either generally received by Submission, or settled by Continuance : So that after the Time of *Alexander the Great*, the *Jewish* Nation was governed by their own High-Priests and Sanhedrim, and lived according to their own Laws in all Matters both Civil and Ecclesiastical ; tho', more often, I own, with a Subordination to the Sovereignty of the Kings of *Egypt*, till this Invasion of their Religion and Liberties by *Antiochus* : So that they had a legal Right to the free Exercise of their Religion, which could not, without the highest Violence and Injustice, be taken from them.

1 Macc. 1.
37.

Cap. 3. 4.

Cap. 3.

F. Notwithstanding what you have now said concerning this Action, I doubt not, but if you will consider *Josephus* a little better, as also the two Books of the *Maccabees*, you will find, that not only *Antiochus Epiphanes*, but also *Antiochus the Great* and *Seleucus Philopater*, were true and lawful Monarchs of *Cælo-Syria*, and consequently of *Palestine*. And tho' I grant there had been Wars between *Antiochus the Great* and *Ptolomy Philopater*, concerning the Dominion of that Country ; yet it is plain out of *Josephus's* Antiquities, Lib. 12. That *Antiochus* had reconquer'd all this Country from the *Egyptians*, tho' he afterwards parted with half of the Tribute of it to *Ptolomy Epiphanes* King of *Egypt*, as a Dowry with *Cleopatra* his Daughter ; yet surely he retained the Supreme Dominion of it to himself ; for we find in the second Book of *Maccabees*, that *Seleucus Philopater* supplied all the Costs of the Sacrifices out of his own Revenues ; that is, of those Sacrifices that were offered for the Health of the King, as they were afterwards for the *Roman Emperors* : And we find in the beginning of both the Books of the *Maccabees*, that the King of *Syria* had Power to make and unmake the High-Priest whenever he pleased, as having the Dominion over *Cælo-Syria* and *Phœnicia* ; over which, as appears by the second Chapter of the second Book of *Maccabees*, *Seleucus* had made *Apollonius* Governor under him ; so that there cannot be more certain Marks of Sovereign Majesty

Majesty exercised by the *Great Turk* over any of those Tributary Princes or Governors, which he places and displaces at his pleasure. And therefore, it is apparent, notwithstanding what you have said to the contrary, out of I know not what Authors, that the Government of *Antiochus Epiphanes* was an unjust Usurpation; for, bating this Tyranny in the exercise of it, he had a juster Title than ever *Alexander* the Great had; since, besides Conquest, he had your own Right of Prescription by three Descents: And I have *Grotius* (besides other more antient Authors) on my side in this matter. And pray now see *Grotius's* Opinion, in his first Book *de J. B. & P. cap. 4.* which I will read into *English*; and I think will make sufficiently for my Opinion.

“ The Fact of the *Maccabees* may seem like to this, (*viz.* the Example of *David* before going) for that some do defend these Arms by this Pretence, as if *Antiochus* were not their King, but an Invader, I suppose to be vain; since no where in all the History of the *Maccabees*, *Antiochus* is called by any other Name but that of the King; and that deservedly, since the *Jews* had long since acknowledged the Empire of the *Macedonians*, in whose Right *Antiochus* had succeeded; for that the Law forbids a Stranger to be set over the People is only to be understood of a voluntary Election, and not of that which the People were forced to submit to by a Necessity of the Times. But what others say, that the *Jews* then used the Right of a People, who were in their own Power, is not true. For first of all, the *Jews* being conquered by *Nebuchadnezzar*, by the Right of War, obeyed by the same Right the *Medes* and *Persians*, as Successors to the *Caldeans*, whose whole Empire devolved upon the *Macedonians*, (with which *Justin* likewise agrees in his 36th Book:) Hence the *Jews* are said by *Tacitus*, to have been, during the Empire of the *Medes* and *Persians*, *Vilissima pars Servientium*. Neither did they covenant any thing with *Alexander*, and his Successors, but submitted themselves to their Dominion without any Conditions, as they had been under that of *Darius* before. But if the *Jews* were sometimes permitted to observe their own Rights and Laws, that was merely precarious, proceeding from the Beneficence of those Kings, and not from any Law superinduced on their Empire. Therefore there is nothing which can defend the *Maccabees* in this matter, beside the most extreme and most certain Danger, (*viz.*) as long as they so contained themselves within the bounds of Self-defence; and that according to *David's* Example, they retired into desert Places for their Security; nor took Arms until they were set upon.” So far *Grotius*.

M. I shall not farther dispute this Point, though I thought I had very good Authority on my side; but I think I have a better Apology to make for this Action of theirs, *viz.* That God might very well, either by an express Revelation, or at least a Divine Impulse of his Holy Spirit, command or excite *Mattathias*, and his Sons the *Maccabees*, to take Arms in defence of those Privileges, which had been so often confirmed to them, 'till at last it pleased God to restore the *Jews* to an absolute Liberty for some Years, under their own Princes; which they abusing, by Cruelty and Ambition, tyrannizing over their Subjects, and murdering their Brothers, it was no wonder that God was pleased to take away the Scepter from them, and confer it upon the *Romans*, who gave it under them to *Herod*, the Son of *Antipater*, the *Idumean*. And therefore you can with no more Justice urge this Example of the *Maccabees*, to prove Subjects may resist the Supreme Powers, than to alledge the Example of *Jehu* as an Authority for Rebellion: Since, as I said before, whatsoever God is pleased to bring about by humane Means, but yet by his particular Precept or Revelation, is to be still look'd upon as an Exception from the general Rules of Non-resistance and Passive Obedience.

F. I confess what you say would fully answer my Objection, could you as evidently make out, from the History of the *Maccabees*, or *Josephus*, that these *Maccabean* Captains did at all act in those Wars they made, by any express Precept, or Divine Revelation from God, as without any just Grounds you suppose it. And therefore, I desire you would shew me, if you can, any Testimony out of the Books of the *Maccabees*, or *Josephus*, to prove that they acted thus by virtue of any such Divine Inspiration, and then I am contented to yield the Cause; which, if you cannot do (as I think you can't) I must look upon my self as to

have had the *better* in this Controversy, concerning the Right that Subjects had to resist, in Case of Necessity, before the coming of Christ.

v. 16.

M. Yet for all that, some of the Fathers, and modern Commentators on these Books of the *Maccabees*, do hold, that such wonderful Victories, as were obtained by *Judas* and his Brethren, could not have been without the miraculous Providence of God, and consequently a Divine Inspiration assisting them; especially considering the strange Judgment that we read fell upon *Antiochus* for his Impiety; and that *Judas* had oftentimes Divine Revelations, appears by that Dream or Vision, mentioned in the last Chapter of the second of *Maccabees*; of *Jeremiah* the Prophet's giving him a *Golden Sword*, and in giving it, speaking thus, *Take this Holy Sword, a Gift from God, with which thou shalt wound the Adversaries*: Which Dream, if it were sent from God, as is highly probable, sufficiently confirms the commonly received Opinion, that this Resistance of the *Maccabees* was by Divine Warrant, or Inspiration: And whenever you can shew me, since the coming of Christ, any Resistance so miraculously abetted as this was, I will grant it also to be lawful.

F. I do join Issue with you in this, and must still suppose (until you give me better Evidence to the contrary) that the *Jews*, under the Conduct of the *Maccabees*, did not take up Arms against *Antiochus*, and his Successors, by virtue of any Divine Inspiration to *Mattathias*, or any of his Sons: For it appears plainly, as well by the Scripture, as by *Josephus's* Testimony, that there was no more Divine Revelation after *Malachi*; neither do the Books of the *Maccabees*, *Josephus*, *Sulpitius Severus*, or any other antient Ecclesiastical Writer, mention these *Maccabees* as Men inspired by God. I grant, indeed, they might be excited by some divine Impulse of God's Spirit to do what they did: But this is so far from being at all miraculous, that I do suppose that divers great and good Men have been, in our latter Times of Reformation, stirred up by the same Divine Spirit to undertake, and perform extraordinary things, for the Reformation of Religion, and the Deliverance of God's Church and People. And therefore, as for the *Vision*, or *Dream*, which you mention, it doth not appear, that it was any more than an ordinary Dream; and if this might pass for a Proof of a Divine Revelation, I could quote you many such Dreams as this, out of the Lives of *Luther*, *Calvin*, and divers others of the first Reformers; whom I suppose you will not maintain to have had any express Revelation to do what they did, contrary to the Civil and Ecclesiastick Laws of those Princes and States under which they lived. And 'tis true these Books are not held Canonical; yet they were always esteemed in the Church as sacred Writing, as written, tho' not by inspired, yet by pious Men: And though they are not received in matters of Faith and Doctrine, yet you know very well they are commanded to be read in our Churches, as containing excellent Precepts, and Examples in matters of Morality; and though therefore, though perhaps they would not be a good Authority to a Presbyterian, yet, I hope, we of the Church of *England* cannot refuse them as Rules of Morality. But I think we are now come to the last Instances that can be brought before the coming of Christ; and therefore pray will you now proceed with your Quotations out of the New Testament, which, I suppose, you have ready for me.

M. I confess I am not able, in a Story so imperfectly related as this of the *Maccabees*, to prove they had God's express Warrant for this Resistance; and you, on the other side, produce but a negative Argument, that they had not (*viz.*) because neither *Josephus*, nor the Book of the *Maccabees* expressly mention any such thing: And yet for all that *Mattathias* might, (for ought that you, or I know) have acted in this matter by Divine Revelation; since, as the *Rabbins* suppose, there was for a long time after the Times of the Prophets, a lower sort of Revelation given by God to some particular Men called *Batcol*, that is, the *Daughter of the Voice*, which seems to have been some private or inward Voice, by which God revealed his Will in some particular Cases. And we read that long after this, *Josephus* relates, that *Hircanus*, the last good High-Priest of the *Maccabean* Race, had the Gift of *Prophecy* by Divine Revelation: And why his great Grandfather might not have it likewise, I see no Reason. Besides all this, there might be other Reasons that God might allow to the People of the *Jews* a greater Liberty of Resistance, even without Civil Authority, to revenge the Prophanation of

of his Temple, and Religion, being the Place where he was pleased particularly to place his Name, than are allowed to us Christians at this Day, who have no such visible Temple, nor are under such severe Obligations to extirpate Idolatry. So that what *Mattathias*, and the People of the *Jews* acted in this matter, they might do it by the Right of Zealots, for the defence of the Law of *Moses*; even as *Phineas* did, who, by killing *Zimri* and *Cosbi* for Fornication and Idolatry, did that which in another occasion, and at another time, would have been downright Murder.

But be it as it will, I think we Christians are by the Laws of the Gospel tied to a stricter Subjection to the Supreme Powers, (if it be possible) than the *Jews* themselves were; and whatsoever they might have done under *Antiochus* for their own Defence, and to avoid Persecution, yet Jesus Christ doth now require *higher things* of us; and hath by his own Example, as well as Precept, forbidden us to resist the Supreme Powers for any Persecution for Religion whatsoever; since he hath ordained his Religion to be propagated, and defended by Sufferings and Persuasions, and not by force of Arms, against the Will of the Supreme Powers; and if not for Religion, the most weighty of all Concerns, surely not for any temporal thing whatsoever. But the Proof of this requires more time than this Evening will afford, without trespassing too much upon your, as well as my own Repose. And therefore, I should be glad of another Evening's Conversation with you, to free your Mind, if it were possible, from this dangerous Error, and to bring you over to the true Belief, and Practice of the Primitive Christians, and of our Mother, the Church of England, who treads exactly in their Steps.

F. I humbly thank you for your great Kindness to me, and the Pains you have taken; as also for what you intend to take for the better Information of my Conscience. And therefore, if you please, and that you have no other occasion to draw you forth out of your Lodgings, I will wait upon you again to-morrow in the Evening about Seven; and shall think it a very proper Work for the Lord's Day, to have my Conscience better informed by those Testimonies, which you say you will bring out of the New Testament, and Writings of the Primitive Fathers, and Church Historians, for my Instruction: And if you can out of them prove to me, that *all Resistance whatever is unlawful*, I promise you, upon the Word of an honest Man, to become a Profelite to this Doctrine.

M. I humbly thank you, Sir, for your great Candour and Ingenuity: And though I am no profess'd Divine, yet I hope, by the help of the Scripture, and those Quotations that I can produce out of the Fathers, as also from the constant Practice of the Primitive Church, to prove these Doctrines of Passive Obedience and Non-resistance to be the true, antient and apostolical Belief. But it is now late, and I will not trouble you any longer to-night, therefore shall take my leave of you. And so, Sir, your humble Servant.

F. Dear Sir, good Night; yours most heartily. Well, to-morrow I will wait upon you, as I appointed.

M. Pray be sure to come at your Hour; for I'll expect you.





Bibliotheca Politica.

DIALOGUE IV.

Whether Absolute Non-resistance of the Supreme Powers be enjoined by the Doctrine of the Gospel, and was the antient Practice of the Primitive Church, and the constant Doctrine of our Reformed Church of England.

M. OUR Servant, Sir : I see you are better than your Word, since you come somewhat before the time appointed.



Y. I do not deserve any great Commendation for it ; for this Evening being a time of leisure, I had nothing else to do but to wait on you : And indeed I was impatient 'till I was with you ; since I desire nothing more, than to receive Satisfaction in this weighty Controversy ; since I know how great a Master you are both in Divine, as well as Civil Knowledge. And therefore, I beseech you to proceed in the Method I at first propos'd, by giving me these places of Scripture out of the New Testament, which you suppose, prove your Doctrine ; and in the next place shew me, that they were always understood by the antient Fathers, as well as the Practice of the whole Primitive Church, in that Sense.

M. I very well approve of your Method ; and therefore, to go on where we left off, I shall, in the first Place, lay down some plain, and easy Propositions, as the Grounds of our future Discourse, which, I hope, you will have no Reason to deny.

First therefore, I suppose, that our Saviour's Kingdom not being of this World, he came not to alter the Civil Government or Polity of it, (as you have already asserted.) And therefore did not alter any of those Rights of Sovereign Powers, and those Measures of Obedience and Subjection which were before fixed and determin'd by God himself : Neither hath given the People (either considered as particular Men, or as a collective Body) any Power or Right to resist, or rebel against such Supreme Magistrates, though they never so much abuse their Power, by their tyrannical Government, either by persecuting the true Religion, or by any other Violences and Oppressions whatsoever.

And our Saviour himself tells us, *That he came not to destroy the Law, and the Prophets, but to fulfil it* ; that is, to fulfil the antient Types and Prophecies in his own Person, to perfect an External and Ceremonial, by a Real and Evangelical Righteousness ; to perfect the moral Laws with new Instances and Degrees of

Virtue

Virtue and Obedience; but he abrogated no moral Law, and therefore not the Laws of Obedience and Subjection to Princes, which have always been reduced to the Fifth Commandment. Pray tell me how you approve of this Doctrine?

F. I do readily agree to the greatest part of it; but yet as our Saviour hath not been pleased expressly to enjoin us to resist the Supreme Powers, when they manifestly break and transgress all the Ends of Civil Government, and consequently dissolve it; so on the other side, he came not to destroy those natural Rights, which Mankind enjoyed before his coming, of defending themselves; and providing for their own Happiness and Security, when their Civil Governors either could not, or would not protect them. And as I grant, that our Saviour made no Alteration in Civil Governments, by abridging the Rights of Sovereign Power; so likewise hath he not conferred upon them any new Rights or Prerogatives of *destroying*, or *enslaving* their Subjects, without any Contradiction or Resistance; and consequently hath altered nothing in those natural Rights, or Means which the People had before his coming, of hindering the Supreme Powers from perverting those main Ends of Government, the Happiness and Preservation of the People. And that this Liberty doth not any way destroy those Rights or Prerogatives which are necessary for their own Security, and the well-governing of their People, I have, I think, sufficiently proved in our last Conversation. So that, unless you can now shew me, by such express Authorities, as that I can have no reasonable ground to deny it, I hope you will pardon me, if I cannot believe, that Christ by his coming into the World has taken away; or abridged that natural Right which Mankind before enjoyed (even after the Institution of Civil Government) of Resistance or Self-defence, in Cases of Extremity, against those who exercise nothing of that Supreme Power, with which God hath invested them, but the meer Title. For had the Intent of our Saviour's coming been for this End, he had, instead of freeing us from the Yoke of the Law, laid a much heavier upon our Necks, if the Doctrines of Passive Obedience and Non-resistance are to be taken in that large Sense, and unlimited Extent, that their Asserters have been pleased to give them. So that though I grant our Saviour came to perfect, and not to abrogate the moral Law, with new Instances of Virtue and Obedience, and therefore hath not abrogated any Laws of Obedience and Subjection to Princes; so hath he neither abrogated the great Law of Nature, of Self-defence in the People, when they are universally assaulted, or oppress'd in their Lives, Liberties or Properties.

And tho' I grant Obedience to Princes hath been reduced to the Fifth Commandment; yet neither doth that, by commanding us to honour our Father and Mother, forbid all Resistance of Children to the violent and unreasonable Actions of their Parents, much less of those whom they may command, or set on to kill or ruin us, as I have, I think, sufficiently proved at our first Conference. And therefore, I pray, proceed to your Proofs themselves, and shew me, that they prove as much as you have affirmed.

M. Before I come to my Proofs, I pray give me leave to observe to you, by way of Introduction, that as our Saviour hath left the Government of the World as he found it, so he hath, besides all this, given such admirable Laws, as will both teach Princes to govern, and Subjects to obey better, which is the most effectual way to secure the publick Peace and Happiness, to prevent the Oppression of Subjects, and Rebellion against Princes: But he has not interposed in new modelling the Governments of the World, which is not of such Consequence as some Men imagine. It is not the external Form of Government, but the fatherly Care, Prudence and Justice of Governors, with the dutiful Obedience of Subjects, which can make any People happy. If Princes and Subjects prove good Christians, they may be happy under most forms of Government; if they be not, they can be so under none. Had our Saviour given Subjects Liberty to resist, to depose, to murder tyrannical Princes, he had done them no kindness at all: For to give Liberty to Subjects to resist, is only to proclaim an universal Licence to Factions and Seditions, and Civil Wars: And if any Man can think this such a mighty Blessing to the World, yet methinks it is not a Blessing proper for the Prince of Peace to give.

But he who instructs Princes to rule as God's Ministers and Vicegerents, and to express a fatherly Care and Concern for the Happiness of their Subjects, and that

Ibid. p. 47. that teaches Subjects to reverence and obey their Prince as the Image of God, and quietly to submit, and yield to his Authority, and that inforces these Laws both on Princes and Subjects in the Name and Authority of God; and from the Consideration of the future Judgment, when Princes, who abuse their Power, shall give an account of it to their great Master, and when Subjects who resist, shall receive to themselves Damnation; and those who patiently suffer for God's sake shall have their Injuries redress'd, and their Obedience rewarded: I say, such a Person as this, takes a more effectual Course to reform the Abuses of Civil Power, and to preserve good Government in the World, than all your *wise Politicians*, and *State-menders*, who think to reform the Government of the World by some State-spells and Charms, without reforming those who govern, and those who are governed. This our Saviour hath done, and this is the best thing that could be done; nay, this was all that he could do in this Matter. He never usurp'd any Civil Power and Authority, and therefore could not new model the Governments of the World: He never offers any external Force and Compulsion to make Men obey his Laws, and therefore never forces Princes to rule well, nor Subjects to obey. But he has taken the same care of the Government of the World, as he has done of the other Duties of Piety and Virtue, that is, he has given very good Laws, and threatned those who break them with eternal Punishments; and as the Laws and Religion of our Saviour prevail, so will the Governments of the World mend without altering the Model and Constitution of them: But I come now to those places of Scripture I have to urge against your Opinion. —

F. I pray, Sir, pardon me, if I interrupt you; and beg leave to make some Remarks upon this Preface you have now made. I will not deny, but you have spoken some honest Truths in what you have now said, though not without a Mixture of divers Mistakes: For though I grant that Jesus Christ hath not interposed in new modelling the Governments of the World, so he hath likewise given Princes no Authority to alter those which they find ready made, and modelled to their Hands, in those Countries wherein God hath placed them at the Helm. And though you tell me those Models of Government are not of such consequence as some Men imagine, yet I hope you ought to have a better Opinion of this of *England*; since it is only to this Frame of Government, that you'll own we owe all our Freedom and Happiness above divers other Nations, our Neighbours: Since, if it were not for our Laws, and Original Constitutions to the contrary, I do not see why we may not be made as absolute Slaves as any in *Turkey*, whenever the King pleases. I grant indeed, that it is the fatherly Care, Prudence, and Justice of Governors that can make any People happy: But I desire you to shew me how many Governments there are in the World where Princes exercise this fatherly Care as they ought, without any known Laws; or where Subjects express a dutiful Love and Obedience to their Governors (unless servile Fear must be called so) whilst they find themselves miserable Slaves and Beggars.

I also yield, that if Princes and Subjects are good Christians, they may be happy under most forms of Government; and if not, they can be happy under none, is true in this Sense, if you take Happiness for the Hopes of a future Life: But otherwise there have been divers Princes who have been very good Christians, and yet by carelessness of their Affairs have governed their Subjects very ill: And likewise, I know some Subjects, who have been very loyal to their Prince, and very good Christians, and yet have been made very miserable; as Witness the Protestants in *Hungary* and *France*.

But as I do not suppose, that our Saviour hath given Subjects Liberty to resist *tyrannical* Princes upon every slight Occasion, much less to *depose* or murder them; yet will it not follow, that if he hath given Liberty to Subjects to resist in some Cases, it would only serve to proclaim an universal Licence to Seditions, and Civil Wars: Since I do not suppose such Wars to be lawful, but when the People are in as miserable Condition as a State of War can bring them to: And if our Saviour had not allowed them this Power, no rational Man would think it a Blessing proper for the Prince of Peace to give, or to come into the World to introduce Slavery, and the arbitrary Power of the Sword.

Though I grant he instructs Princes to rule as God's Ministers and Vicegerents, and to express a fatherly Care and Concern for the Happiness of their Subjects; and

and that he likewise teaches Subjects to obey their Princes : Yet you know too well, how seldom these Instructions have all those good Effects either with the Princes, or People. And therefore, as on the People's side, besides those Obligations of Conscience you speak of, there are likewise ordained temporal Punishments to keep Subjects to their Duty ; so likewise there is often need of something else besides meer Conscience and Honour, to keep Princes from tyrannizing over their Subjects.

And though I suppose the Consideration of a future Judgment may go a great way with some Princes, to make them perform that great Trust God hath given them ; yet pray tell me, have you not read (if not known) some Princes in the World of late Times, who have either believed no such thing as eternal Damnation, or at least have found a way by nice Distinctions, or Equivocations, to evade all Laws, Oaths, and Promises whatsoever ? And what Satisfaction is it to me, or how doth it serve to alleviate my Misery, when I am made a Slave, and a Beggar, that those that had the Rule over me will be damned for so doing ? But you tell me, that I must quietly and patiently suffer this for God's sake, and that then we shall have our Injuries redress'd, and Obedience rewarded. I grant indeed that a single Person may be rewarded in this kind, for preferring the Common Good or Quiet of the Nation before his own Private Interest : But that whole Nations, and Bodies of People, are obliged by the like Rule, I utterly deny, since I do not find where our Saviour either enjoins or requires such an absolute Subjection at their hands ; and if he doth not, it is no better than Will-worship to pay it, and therefore it still lies upon you to prove it to me.

To conclude ; I think it may be a more effectual Course, to preserve the main Ends of Government, for the People sometimes to *resist the insupportable Tyranny and Violence* of the Supreme Powers in those Cases of Extremity I have already put, than to let those, who have got the Power over us in their hands, do whatsoever they please with it, to our Ruin, without any controul. And also, I desire you to consider, whether the Fear of such Resistance from Subjects, when thus outraged and oppress'd, may not often be a more powerful State-spell or Charm (as you call it) to keep the Supreme Powers in their Duty, than those many Sermons, and other Discourses that have been lately preach'd and publish'd, that *their Power is irresistible* ; and that therefore, all their Subjects are bound to endure whatsoever Tyranny they have a mind to exercise upon them. In short, I absolutely agree with you, that as our Saviour never usurp'd any Civil Power, or Authority, and therefore did not new model the Governments of the World ; so hath he also left Subjects a Right to maintain whatsoever Models, or Forms of Government, God hath been pleased to establish among them, when they are in danger to be altered, or invaded, either by a Domestick Tyranny, or Foreign Force. And without this Right of Resistance, for you to tell us, *That Jesus Christ hath given very good Laws, and threatned those that break them with eternal Punishments ; and that as the Laws, and Religion of our Saviour prevail, that so the Government of the World will mend without any more ado* ; is altogether as reasonable, as to preach, that because Christ hath given us good Laws, and threatens everlasting Punishments to those that break them, therefore they are sufficient to keep Men from robbing and murdering their Neighbours ; and that all Men giving up their Natural Rights of resisting such Robbers, and defending themselves against them, should wholly rely upon the Efficacy of the Commandment against Stealing, or else on the more powerful Motive with such People, of a Judge, and a Gallows, should let them do with us what they please, whenever we fall under their Power : And therefore, I desire you would give me some better Proofs, that our Saviour hath enjoined all Mankind an absolute Subjection to the Supreme Powers under pain of Damnation, without any Resistance in any Case whatsoever : But I pray pardon this Digression, which your own long Preface extorted from me.

M. I shall not further dispute this matter with you ; and therefore to observe your Commands, I shall begin with that Divine Answer of our Saviour to the Pharisees and Herodians, when they consulted together to entangle him in his Talk. They came to him with great Ceremony and Address, saying, *Master, we know that thou art true, and teachest the Way of God in Truth, neither carest thou for any Man ; for thou regardest not the Person of Men. Tell us therefore, what thinkest thou ?* S. C. P. p. 49.
Matth. 22.
15, &c.

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Is it lawful to give Tribute to *Cæsar*, or not? They thought it impossible that he should give any Answer to this, which would not make him obnoxious either to the *Roman Emperors*, if he denied that the *Jews* might lawfully pay Tribute to *Cæsar*, or to the *Pharisees*, and People, if he affirmed that they might; for there was a very potent Faction among them, who thought it unlawful for the *Jews* to own the Authority, or Usurpations of any Foreign Prince, or to pay Tribute to him as to their King, they being expressly forbidden by the Law, *Deut. 17. 15. set a Stranger over them for their King*, who was not their Brother, that is, who was not a natural *Jew*. And it seems they could not distinguish between their own voluntary Act in chusing a Stranger for their King (which was indeed forbid by their Law) and their submitting to a Foreign Prince, when they were conquered by him. Our Saviour, who knew their wicked Intention in all this, that they did not come with an honest Design to be instructed in their Duty, but to seek an Advantage against him, expresses some Indignation at it, *Why tempt ye me, ye Hypocrites?* But yet to return them an Answer to their Question, he bids them shew him the Tribute Money, that is, the Money in which they us'd to pay Tribute, and enquired, whose Image and Superscription it had. For Coining of Money was then as certain a Mark of Sovereignty, as making Laws, or the Power of the Sword. Well, they acknowledge that the Image and Superscription on the Tribute Money was *Cæsar's*; upon which, he replies, *Render therefore unto Cæsar, the things that are Cæsar's; and unto God, the things that are God's*. The plain meaning of which Answer is this; that since by the very Impression on their Money, it is evident, that *Cæsar* is the Sovereign Lord, they must render unto him all the Rights of Sovereignty; among which, Tribute is one, as *St. Paul* tells us: *Render therefore unto all their Dues, Tribute to whom Tribute is due, Custom to whom Custom, Fear to whom Fear, Honour to whom Honour*. Whatever then is due to Sovereign Princes, and doth not interfere with their Duty to God, that they must give to *Cæsar*, who at this time was their Sovereign.

And though our Saviour commands us, only in general, *to render to Cæsar the things that are Cæsar's*, without telling us, what *Cæsar's* things are; this is so far from making his Answer ambiguous, and of no use in this present Controversy, that it suggests to us three plain and natural Consequences, which are sufficient to end this whole Dispute. *First*, That our Saviour did not intend to make any Alteration in the Rights of Sovereignty; but what Rights he found Sovereign Princes possess'd of, he leaves them in the quiet Possession of; for had he intended to make any Change in this matter, he would not have given such a general Rule, *to render to Cæsar the things that are Cæsar's*, without specifying what these things are. *Secondly*, And therefore he leaves them to the known Laws of the Empire, to determine what is *Cæsar's* Right; that is, whatever is essential to the Notion of Sovereign Power, whatever the Laws and Customs of Nations determine to be *Cæsar's* Right, that they must render to him; for he would make no alteration in this matter. So that Subjection to Princes, and Non-resistance, is as plainly determin'd by our Saviour in this Law of paying Tribute; for Subjection, and Non-resistance, are as essential a Right of Sovereign Power, and as inseparable from the Notion of it, as any thing can be; and so it is acknowledged by the Laws and Customs of Nations, and is so determin'd by the Apostle *St. Paul*, as I shall shew hereafter. *Thirdly*, I observe farther, that when our Saviour joins our Duty to our Prince with our Duty to our God, *Render to Cæsar the things that are Cæsar's, and to God the things that are God's*, he excepts nothing from *Cæsar's* Right, which by the Laws of Nations is due to Sovereign Princes, but what is a Violation of, and an Encroachment on God's Right and Sovereignty; that is, we must pay all that Obedience and Subjection to Princes, which is consistent with our Duty to God. This is the only Limit our Saviour sets to our Duty to Princes. This, I hope, is sufficient for the Explication of our Saviour's Answer to the *Pharisees* and *Herodians*, which evidently contains the Doctrine of Obedience and Subjection to Princes, enforc'd on us by the Authority of our Saviour himself.

F. I shall not dispute, that this Instance of our Saviour did enjoin the *Jews* to pay Tribute, and render all those Rights and Dues to *Cæsar*, as the Supreme Power, which are necessary to its Essence: But you seem to me to stretch this Prerogative a great deal too far, when you thus suppose an absolute Subjection to Princes,

Princes, without any Resistance, to be as plainly enjoin'd by our Saviour in this Law, as paying Tribute. For the Reason you give for it, viz. that *Subjection, and Non-resistance, are as essential a Right of Sovereign Power, and as inseparable from the Notion of it, as any can be, and that it is so acknowledged by the Laws and Customs of Nations*, is the thing which I deny, and which having been the Subject of our last Conversation, is still to be prov'd: And I think I have there sufficiently prov'd, that absolute Non-resistance is no essential Right of Sovereign Power, nor inseparable from the Notion of it: Since by asserting it, no just Right of Sovereign Power will be thereby destroyed, or taken away, but rather confirm'd. And that I may make it out yet plainer by a familiar Instance: A General of an Army hath an absolute Power over the Lives of his Soldiers that transgress his Rules of War, or Military Discipline: But suppose that in a mad or drunken Fit he should command some Troops of his Guards to cut the Throats of all the rest of the Army, and they should be such obedient Coxcombs as to go about to put this Order in Execution, doth it therefore derogate from the Absoluteness of his Power as General, if the Army will not stand still, and let three or four hundred Fellows take away all their Lives? But that this Principle of *Passive Obedience* in your Sense, of suffering Princes, or other Supreme Powers, to destroy or enslave them, is so far from being acknowledged by the Laws and Customs of all Nations, that, as I think I have proved it to be contrary to the Laws of Nature and Reason; so I doubt not but I can much easier make it out by the Laws and Customs of all Nations, as well barbarous as civiliz'd, to be both unreasonable and impracticable. And that it is otherwise determin'd by St. Paul, I desire you to prove to me, when you come to make use of the 13th to the *Romans*, so much insisted upon by those of your Opinion.

But before I make an end with this Text we are now upon, I cannot but take notice of your last Assertion, *That by rendering to Cæsar the things which are Cæsar's, God excepts nothing from Cæsar's Right, which by the Laws of Nations is due to Sovereign Princes, but what is a Violation of, and Encroachment on God's Right and Sovereignty; that is, we must pay all that Obedience and Subjection to Princes, which is consistent with our Duty to God.* Now if this be the only Limit that our Saviour sets to our Duty to Princes (as you suppose) I wonder by what Law the Learned Doctor, from whom you borrow this Principle, as also those other Clergymen of the Church of England, could justify their refusing to read the King's late Proclamation of Indulgence, or Toleration: For if the King (as they own in the Oath of Supremacy) is the only Supreme Governor of his Dominions, in all Things, or Causes whatsoever; he must likewise be the Cæsar here meant in this Text; and consequently an Active, not Passive Obedience, ought to have been paid to this Declaration. Since you say, that Obedience is by the Law of Nations due to Sovereign Princes, to whom we must pay all that Obedience and Subjection which is consistent with our Duty to God; and I hope you will not say, that this Declaration was inconsistent with that Duty, or was any Violation or Encroachment upon God's Rights of Sovereignty.

M. As for your last Observation upon those Clergymen who refused to read the Declaration, I must confess, I have, according to my Civil Law Maxims, no Excuse ready for them; since with us it is always true, in this as well as other absolute Monarchies, *Quicquid R. gi placuit, Legis habet Vigorem*. Much less can I reconcile it with that unbounded Supremacy which the Oath of Allegiance, as also the Opinions of most modern Judges, have placed in the King in all Ecclesiastical Matters: But indeed, I can least of all reconcile it with this Assertion you now mention; which, I confess, I have taken from divers Sermons and Treatises, that have been Preach'd and Printed of late by our City Divines; to whom I shall leave it to answer this Objection. But to proceed with the Design in hand, I shall come in the next place to prove an absolute Subjection, without Resistance, to be due to the Sovereign Power, from our Saviour's Rebuke to St. Peter, when he drew his Sword, and struck a Servant of the High-Priest, and smote off his Ear; which is as plain a Declaration against Resistance, as Words can make it: Then said Jesus unto him, put up thy Sword unto his place; for all they that take the Sword, shall perish by the Sword. For the understanding of which, we must consider upon what occasion St. Peter drew his Sword; for we must not think that our Saviour doth absolutely forbid the use of the Sword; which is to destroy all Civil Governments, and the Power of Princes, and to proclaim Impunity to all the Villanies that

S. C. R. p. 57.

Mat. 26. 52.

L. p. 58.

are committed in the World. The Sword is necessary to punish Wickedness, and to protect the Innocent: Even in the Hands of Princes it is an Instrument of Justice, as St. Paul tells us: That they bear not the Sword in vain; *but are the Ministers of God, Revengers to execute Wrath upon him that doth Evil.* In the Hands of private Persons it may be lawfully used in Self-defence: Thus our Saviour, a little before his Crucifixion, gave Commission to his Disciples to furnish themselves with Swords, though they parted with their Garments for the Purchase. Which we suppose was not designed as a meer modish, and fashionable thing, but to defend themselves from the private Assaults of Robbers, and such like common Enemies, who, as Josephus tells us, were very numerous at that time: *For no Man wanteth Authority to defend his Life against him, who hath no Authority to take it away.*

But the Case of St. Peter was very different: He drew his Sword indeed in his Master's Defence, but against a lawful Authority. The Officers of the Chief Priests and Pharisees, came with Judas to the Place where Jesus was, to seize on him. This was a lawful Authority, tho' employed upon a very unjust Errand; but Authority must not be resisted, tho' in defence of the greatest Innocence. Men who draw their Swords against lawful Powers, shall perish with the Sword; which doth not signify what the Event shall always be, but what is the Desert and Merit of the Action. Rebels may sometimes be prosperous, but they always deserve Punishment; and if they escape the Sword in this World, St. Paul tells us, they shall receive Damnation in the next. What can be said more expressly against Resistance than this? St. Peter never could have drawn his Sword in a better Cause, never in the Defence of a more sacred Person: If we may defend oppressed Innocence against a lawful Authority, if we may oppose unjust and illegal Violence, if any Obligations of Friendship, Gratitude, or Religion itself, could justify Resistance, St. Peter had not met with this Rebuke. But though it was a very unjust Action, yet it was done by a just Authority; and lawful Powers must not be resisted, though it were in defence of the Saviour of the World: And if St. Peter might not use the Sword in defence of Christ's Person, there is much less pretence to fight for his Religion; for though some call this fighting for Religion, it is only fighting for themselves. Men may keep their Religion if they please, in despite of earthly Powers; and therefore no Powers can hurt Religion, though they may persecute the Professors of it: And therefore when Men take up Arms to avoid Persecution, it is not in defence of Religion, but of themselves; that is, to avoid their suffering for Religion. And if St. Peter might not fight to preserve Christ himself, certainly neither he, nor we, ought to take up Arms to defend ourselves from Persecution. Christ was the first Martyr for his own Religion; his Person was infinitely more sacred and inviolable, than any one of us can pretend to be. And if St. Peter must not fight for Christ, certainly we must not fight for ourselves, though we absurdly enough call it fighting for our Religion. And who were these Powers St. Peter resisted? They were only the Servants and Officers of the High-Priest. The High-Priest did not appear there himself, much less Pilate, much less Casar; and yet our Saviour rebukes St. Peter for resisting the inferior Officers, though they offered the most unjust and illegal Violence. It seems he did not understand our modern Distinctions between the Person, and the Authority of the Prince; that though his Person be sacred, and must not be touched, yet his Ministers, who act by his Authority, may be oppos'd. We may fight his Navies, and demolish his Garrisons, and kill his Subjects, who fight for him, though we must not touch his Person. But he is a mock Prince, whose Authority is confin'd to his own Person, who can do nothing more than what he can do with his two Hands; which cannot answer the ends of Government. A Prince is not merely a Natural, but a Political Person, and his Personal Authority reaches as far as his Commission doth. His Officers and Ministers of State, and Commanders and Soldiers, are his Ends, and Eyes, and Ears, and Legs; and he who resisteth those who act by his Commission, may as properly be said to resist the Personal Authority of the Prince, as if he himself were present in his Natural Person, as well as by his Authority. Thus our Saviour it seems thought, when he rebuk'd St. Peter for striking a Servant of the High Priest, and smiting off his Ear.

F. In answer to this Place, which you have now brought to prove, that the Resistance that St. Peter would have made on our Saviour's behalf, was absolutely unlawful, I shall not insist, as some do, that Christ came into the World on purpose to be a Sacrifice for Sin, and that therefore it was inconsistent with his Design, and the Person he undertook, to resist and oppose, had it been never so lawful to resist: Tho' our Saviour himself, by the Words which St. John relates him to have spoken to St. Peter, seems to favour this Interpretation, when, after he had bid him put his Sword into the Scabbard, he adds, *The Cup which my Father hath given me, shall I not drink it?* And so likewise the Answer he gave Pilate, who asked him whether he was a King? *Thou sayest that I am a King; to this end was I born, and for this cause came I into the World, that I should bear witness unto the Truth.* Nor yet shall I go about to interpret these Words, *For they that take the Sword shall perish by the Sword*, in that Sense which Grotius puts upon it, tho' quite different from yours, as if it were not designed as a Rebuke to St. Peter, but for the Encouragement of his Disciples, and being indeed a Prophecy, that the Jews, who now came against him with Swords and Staves, should perish by the Sword of the Romans, who should be the Avengers of Christ's Death: But I shall take it in the same Sense as you do, as a Rebuke to St. Peter, for going about to resist a lawful Authority, tho' employ'd upon a very unjust Errand. Yet will it not prove that the Supreme Powers may not be resisted in any case, or by any Person whatsoever, let them use their Power never so cruelly or tyrannically against their Subjects. I grant indeed, it proves what I have never denied, that a private Person, tho' innocent, ought not to resist the Civil Officers that come to seize him, for a Crime whereof he is accused before a lawful Authority; for this is not only unlawful by the Command of Christ, but also by the Law of Nature and Nations. For in England it is not only penal for a Man to resist the Officers of Justice that come to seize him, tho' he be innocent of the Crime whereof he is accus'd, but also to withdraw himself from Justice by flight. And tho' upon Trial he be found innocent, yet if he fled for the same, he shall forfeit all his Goods, and that very justly, because no Man ought to suspect the publick Justice, or to withdraw himself from the Trial of the Laws. Now to apply this to the Case of our Saviour, tho' the Action which these Priests and Soldiers came about was in it self unjust; yet was it not so either in respect of these Officers themselves, who acted by a lawful Authority; nor yet was it unjust or unlawful in respect of the High Priest and Sanhedrim, who sent them: For since it belong'd to them alone to judge of a Prophet, who they supposed taught contrary to the Law of Moses, since they did believe our Saviour to be such a Prophet, it was in respect of them neither unjust nor unlawful to seize him, and bring him before them, to give an account of his Doctrine: And they might likewise do this either by day or by night, with the help of more or fewer Men, according as they should think fit; since they feared the People might rescue him; especially since they look'd upon him as one who went about to make himself King of the Jews, in opposition to Caesar; and therefore whilst they lay under this Mistake, they were under as high an Obligation, as an erroneous Conscience could lay upon them, of seizing him, and bringing him before the High Priest and the Governor. For if they had believed him to be the true Messiah, and consequently the King of their Nation, it had been impossible that they should ever have gone about to put him to Death. Which likewise our Saviour himself acknowledges, when praying for them that crucified him, he said, *Father, forgive them, for they know not what they do.*

I speak not this to excuse the Priests, or Sanhedrim, for condemning our Saviour to Death, or for using all the Power they had with Pilate to have him executed; since I grant their Ignorance being in great part wilful, at least not invincible, they had no just Excuse not to believe in him, after so many Miracles he had wrought in the sight of all the World: But only to prove that which I suppose you will not deny, that Magistrates, even whilst they act unjustly, are not to be resisted in the Execution of publick Justice; no, nor to rescue an innocent Man by force from the Hand of Justice, after he is condemned: Since the false or unjust Sentences of Judges against particular Persons are to be taken for just in common acceptation, till they be repealed; according to that Maxim in your Civil Law, *Prætor, dum iniquum decernit, jus dicit.* And therefore our Saviour coming to fulfil all Righteousness, and to be the exact Pattern of Divine and Moral Actions, could not do less than rebuke St. Peter, for making use of the Sword

against a lawful Authority. But what is this to the Cases that I have put of the *Resistance* of whole Nations, or great Bodies of Men, against an unjust Force and and destructive Violence upon their Persons and Estates, by those who pretend to act as the *Supreme Powers*, tho' contrary to all Laws *natural* and *divine*, and who have no Pretence to act as they do, but only their unjust and arbitrary Wills back'd by Power. And that there is a great difference in these two, I will clearly shew you, from your own Concession, *that no Man wanteth Authority to defend his Life against him that hath no Authority to take it away*; and therefore I suppose St. Paul might, only with the help of those that were with him, not only have defended his Life against those whom we find (in the 25th of the *Acts*) were by Order of the High-Priest, and Chief of the *Jews*, to have lain in wait to kill *Paul* by the way, but also against any that *Festus* the Governor himself should have sent for the same end:

Acts 21. Since he there declares, *That it is not the Manner (i.e. Law) of the Romans, to deliver any Man to die before that he that is accused have the Accusers face to face, and have licence to answer for himself concerning the Crime laid against him.* And therefore as *Cæsar* could give *Festus* no Commission to murder Men, so neither did God bestow on the Emperor any Authority to commit Murder, or to authorize others to do it. And if a single Person might do this, certainly much more a whole Nation, Country, or City, may justify such a *Resistance*, where their Lives, Liberties and Estates lie at stake, from the Violence or Tyranny of the *Supreme Powers*; and therefore I do not see, but that I may very well grant the Instance you have put to be conclusive against this *Resistance* made by St. Peter on our Saviour's behalf: So that it doth not reach the Case in hand, that all Resistance of *Supreme Powers* is unlawful. So that unless Princes and their inferior Officers receive Authority from God to commit Murders, every Man may defend himself against them, when they go about to take away their Lives by Violence contrary to Law. And therefore I see no Reason, from any thing that you have hitherto said, to believe that Christ did not allow this Distinction, between the *Person* and *Authority* of the Prince, to be good in some Cases; or, tho' his Person should be sacred, yet that his Ministers, who act not by his Regal Authority, but his Personal and Tyrannical Will, may be opposed. Nor can I find any Consequence from what you say, *That he is a mock Prince whose Authority is confined to his own Person, who can do nothing more than what he can do with his own Hands*; since no Man in his Wits asserts any such thing: For I grant, that an *Absolute Prince* hath Power to make Laws, and to command them to be put in execution, which do not contradict the Laws of God and Nature; and a *Limited Prince* hath likewise a Right to command in all things, that do not expressly contradict God's Natural and Revealed Laws, and also those Positive Laws of his Country (which he is not the sole Maker of) that do not contradict the former: And if he can do this, I think he is endued with an Authority sufficient to answer all the Ends of Government, without supposing that he must needs have an irresistible Power (and without which he cannot answer those Ends) to murder and enslave whomsoever he will. I grant indeed, a Prince is not merely a Natural, but a Political Person; but certainly his Personal Authority, as King, doth not reach as far as his Commission, or that he who resists those who act by his Commission, may be said in all Cases to resist his Regal Authority: Since at this rate the poor Protestants in *Ireland*, at the beginning of the last *Irish* Rebellion, had been in a very woeful Condition, if it had happen'd (which was not impossible) that King *Charles* the First should really have granted a Commission to Sir *Phelim Oneal* to destroy them; which no Man could then certainly tell but that he had, since Sir *Phelim* publicly shewed such a Commission, and still asserted the Truth of it, till he came upon the Gallows. But this is only by the by, and in answer to what you have now said to this matter. So that there is no need of supposing what our Saviour intended one way or other in this matter; since he did not rebuke St. Peter for resisting the inferior Officers, because they offered an unjust and illegal Violence; but because he resisted those who acted by a true and legal Commission from the High-Priest and *Sanhedrim*, who supposed our Saviour to be a false Prophet.

M. If this Distinction of yours were true, it would render the Example of Christ's Suffering, in obedience to the *Supreme Powers*, tho' unjustly, yet without *Resistance*, of no effect to us; whereas I am firmly persuaded, that Christ took such a mean and suffering a Person upon him, because it was most agreeable to the Religion which he preach'd, and of which he was to be an Example; and therefore,

fore, tho' Christ suffered for other Reasons, and to other Ends and Purposes than we do or can suffer, yet his Sufferings are an Example to us, because God chose to save and redeem us by the Sufferings of his Son, not only that he might expiate our Sins by his Blood, but also that he might be an Example to us of Meekness, and Patience, and Submission to the Divine Will, and Subjection to Government, even in the most unjust and infamous Sufferings. We may consider farther, that Christ's Sufferings, in obedience to the Will and Appointment of God, do not make him unfit to be our Example : For tho' God has not so peremptorily decreed that all Christians should suffer, as he did that Christ should suffer ; yet whenever we are called to it (as we always are, when we cannot avoid suffering without *resisting a lawful Authority*) our Sufferings are as much the Effects of God's Decree and Appointment, as the Sufferings of Christ were ; and in such Cases every Christian may and ought to say, as his Lord did, *The Cup which my Father hath given me, shall I not drink it ?* I. p. 82.

Thus St. Peter expressly tells the Christians to whom he wrote, and gives it as a Reason why they should suffer patiently, even for doing well : *For even hereunto were you called, because Christ also suffered for us, leaving us an Example, that we should follow his steps.* Now *calling*, in the New Testament, signifies the Choice and Election of God, and always supposes a Divine Decree, Appointment, and Constitution, as the Foundation of it. Thus St. Paul tells us, that the *Gifts and Calling* (κλησις) of God are without Repentance ; that is, that Decree he made to chuse the Posterity of *Abraham* for his People, which still entitled all those of them to the Blessings of the Gospel, who would believe in Christ. Thus the State of Christianity is our *Calling*, and *Holy Calling*, because it is the Way and Means God hath chosen and appointed for the Salvation of Mankind : And Christians are often stiled *the Called*, because God has now decreed to chuse all the sincere Disciples of Christ, as he formerly did the Posterity of *Abraham*, to be his peculiar People ; and throughout the Scriptures of the New Testament, God is never said to *call*, nor any one *to be called of God*, but with respect to some Divine Decree and Constitution. And therefore when St. Peter tells the Christians, that they are *called to suffer*, it signifies that God hath appointed them to it by his positive Will and Decree. 1 Pet. 2. 21.

This St. Paul discourses more at large in his Epistle to the *Romans*, and comforts them under their Sufferings, from this very Consideration : That the Sufferings which they underwent were not the Effects of meer Chance and Accident, nor of the Wickedness and Injustice of Men, nor barely of God's Permission, but of his Decree and Appointment ; and therefore they might certainly conclude, that whatever their Sufferings were, they should turn to their good. *And we know, that all things work together for good to them that love God, to them that are called according to his purpose :* Those who are called, that is, to suffer (which is the Argument the Apostle is discoursing of) according to his Will and Appointment. And a little after he goes on, and says : And such Persons who are thus appointed, who are thus called by God to suffer, shall be sure to conquer, and to receive the Reward of Conquerors. For thus the Apostle adds : *For whom he did foreknow, he also did predestinate, to be conformed to the Image of his Son, that he might be the first-born amongst many Brethren.* This Conformity to the Image of Christ in this place doth plainly signify a Conformity to him in Sufferings, as is evident from the whole scope of this Place. Some Persons it seems there are, whom God doth predestinate or foreappoint to be conformed to the Sufferings of Christ ; for this is not the actual Portion of all Christians, though it is the Condition of our Discipleship. Rom. 8. 28, 29, 30.

So that though God hath not made us Slaves and Vassals to the Humour of every Tyrant, yet all the Afflictions and Sufferings of Christians, especially those which befall them on the account of Religion, are as particularly ordered and determined by God, as the Sufferings of Christ himself were ; and therefore there is no difference upon this account between the Sufferings of Christ and the Sufferings of his Disciples ; and therefore though Christ came into the World on purpose to suffer, in obedience to the Divine Will, this doth not make him ever the less fit to be an Example to us. Nay, this Obedience to the Will of God, in suffering the hardest things from the most unjust and tyrannical Powers, is an Example to us of the same patient Suffering, and Submission to the Will of God. II. p. 85.

It is true, none of us in particular can know, that God hath decreed, that we shall suffer such or such things, and from such or such hands, as our Saviour did : I. p. 81.

But

But yet this we know, that it is God's Will and Pleasure, that we should patiently endure those Sufferings, which we cannot avoid without Sin ; and since he hath forbid us by express Laws to resist the Higher Powers, whatever Sufferings cannot be avoided without *Resistance*, it is God's Will and Pleasure that we should submit to them. And since none of these Sufferings, which are unavoidable to us, befall us without the particular Decree and Appointment of God, we have reason, in imitation of our Great Master, to submit to them with the same Cheerfulness and Self-resignation as he did.

There is something indeed in the Example of our Saviour, which in our Circumstances we are not bound to imitate ; for he punctually knowing what God's Will and Pleasure was concerning him, voluntarily chose that Condition, which he so well knew God had allotted for him. He freely chose a mean and servile Fortune, he chose Suffering and Death ; when his Time of offering up himself was come, he went up to *Jerusalem* on purpose to die there : But we are not bound to chuse Poverty, and Disgrace, and Suffering ; we are not bound voluntarily to deliver up our selves into the hands of Tyrants and Persecutors, who thirst after our Blood. We may and ought to use all just and honest Arts to make our Condition easy and comfortable in the World, and to avoid the Rage and Fury of bloody Men, because we cannot tell, that it is the Will and Appointment of God that we shall suffer, till our Sufferings are unavoidable ; and then when we must either suffer or sin, when we must either renounce our Religion, or resist the Supreme Powers ; we must embrace Sufferings and Death, as that Portion which God hath allotted for us.

I shall only here observe what a mighty Security this is to all good Christians, how absolute or tyrannical soever the Power be under which they live ; that they are safe in God's hands, and all the Powers of Men and Devils cannot touch them, till God by a positive Decree appoints and orders their Sufferings. There could not be greater nor more absolute Tyrants than the *Roman* Emperors were at this time ; and yet they had no Power over the meanest Christian, but by an express Commission from Heaven. This is the special Privilege of the Christian Church above the rest of Mankind, *that they are God's peculiar Care and Charge* ; that he doth not permit any Sufferings or Persecutions to befall them, but what he himself orders and appoints. It is a great Security to the World, that there is no Evil happens to Men but what God permits, and that he permits nothing but what he can over-rule to wise and good Ends ; but it is a greater Happiness to have our Condition immediately allotted by God. God may permit a great many Evils to befall us in Anger and Displeasure ; but when he takes us into his immediate Protection, and under his own Government, whatever Evils he appoints for us, whoever are the Instruments of them, they are certainly for our good. And therefore there is no such Danger in the Doctrine of *Non-resistance*, as some Men imagine : How absolute soever this may be thought to render Princes, sincere Christians can suffer nothing by it, for they shall suffer nothing more nor less than what God appoints for them to suffer : But as for the Absurdity you think you have brought me to, by granting that no Man wants Authority to defend his own Life against him who hath no Authority to take it away, that does not extend to *Supreme Powers* ; since, tho' I grant they have no Authority to take away Mens Lives contrary to Law ; yet does it not follow that we may *resist* and *oppose* them, if they do. This I absolutely deny, because God hath expressly commanded us not to resist them ; and I see no Inconsistency between these two Propositions, that a Prince hath no legal Authority to take away Mens Lives against Law, and yet that he must not be resisted when he does so ; for both the Laws of God and of our Country suppose these two to be very consistent.

F. To answer this long Speech of yours, the best way may be to shew you, first, how far I agree with you, and wherein I must differ from you ; and I will also tell you what Reasons I have for it. In the first place I grant, that though our Saviour was indeed the *Messias*, and true King of the *Jews*, yet was he not such a *Messias* as they expected, nor was he to have a Temporal, but Spiritual Dominion ; and therefore would not be such a King, though the *Jews* would have made him so. I likewise yield, that Christ submitted to the most unjust Sentence, and to the most ignominious and painful Death, rather than he would *resist* the *Higher Powers* ; though he could easily have called for Legions of Angels to his rescue : As also that he rebuked *Peter*, when he drew his Sword in his defence,

and

and tells *Pilate* the Reason why he was so easily apprehended, and without any Resistance or Opposition. *My Kingdom* (said he) *is not of this World: if my Kingdom were of this World, then would my Servants fight, that I should not be delivered to the Jews; but now is my Kingdom not from hence.* All which plainly shews, that our Saviour's Subjection was no matter of Force or Constraint, because he wanted Power to resist; but it was matter of Choice, that which was most suitable to the Nature of his Kingdom, which was not to be propagated by carnal Weapons, but by Sufferings: Yet though it may not be propagated, sure it may be defended by force, in some cases; as, if we were invaded by a foreign Power, who made War upon the account of Religion; and also in those Kingdoms or Commonwealths, where Christianity or the true Profession of the Gospel is established by Law, and makes a part, not only of the Ecclesiastical, but Civil Constitution of a Nation. In these cases, if those who pretend to the sole Legislative Power (but have it not) should go about to alter the National Religion by force, and put Men to death contrary to the former Laws and Constitutions of that Kingdom, I think such illegal Powers may lawfully be resisted by the People, they having as much Right to the free Exercise and Enjoyment of their establish'd Religion, as they have to their Liberties, Properties, or any other Civil Rights; since by this legal Establishment Religion becomes a part of the Civil Constitution of the Kingdom, and so may be maintained by the same means as other Rights.

2dly, I grant, that in all other Cases our Saviour hath so far propos'd his Sufferings to us for our Imitation, as we are engaged by our Baptismal Vow to suffer in the same Cause for which he himself suffered, that is, for the bearing witness, *That Jesus is the Christ, or true Messiah, and Son of God.* And this the Apostle calls (speaking of Christ himself) *the witnessing before Pontius Pilate a good Confession.* The like I also hold of all such Truths, as are the necessary Consequences of this great Doctrine.

3dly, I farther grant, that when God calls any Person to suffer for the Testimony of his Truth, by the Cruelty of those who are the *Supreme Powers* (as the Apostles and Primitive Christians were by a particular Providence) that then those Powers are not to be resisted, but patiently submitted to by Christians at this day; whenever it proves necessary for the same great Ends for which Christ at first enjoined it, viz. for bearing witness to the Truth of the Gospel, and for the further Propagation thereof by our constant Sufferings and Example, according to that Saying of the Primitive Fathers, *Sanguis Martyrum semen Ecclesiae.* Yet is not this absolute Submission to the *Supreme Powers*, in Matters of Religion, due by the *Law of Nature*, or that delivered to *Moses*; but (if at all) purely from the express Command or Example of Christ. So that all the difficulty lies in discovering, when we are thus called by our Saviour to suffer and bear witness to the Truth, though with the Loss of our Lives, and all that is dear to us.

And therefore, if I should grant, that whenever we lie under the like Circumstances of giving this Testimony as the Primitive Christians then did, and that it may serve as much for the same Ends design'd thereby by God, we are also under the same Obligations; otherwise I think we are lawfully discharged from it. As for example; suppose the King should, instead of a *Papist*, have turned *Mahometan*, and, to propagate or set up his own abominable Superstition here, should have sent for, from *Turkey* or *Morocco*, a great Army of *Turks* or *Moors*, and by them would force all the Christians in *England* to turn *Mahometans*, by the same Methods of Dragooning Men and seizing their Estates, as the *French* King hath exercised upon his Protestant Subjects; can any reasonable Man believe, that we lie under the same Obligation thus to suffer in a Country where the People are all Christians, as we were if we had happen'd to be converted in a Country where almost all or the greater part of them were *Mahometans* or *Heathens*, and where the *Mahometan* or *Pagan* Religion hath been for many Ages the established Religion of that Nation and Government.

For in our Case, there is no farther occasion to bear witness to the Truth by patient suffering for it; nor yet of propagating it by our Martyrdom; since all the People amongst whom we live are sufficiently convinced of the Truth of it: Nor can it be reasonable that our Saviour should give up whole Nations to be thus destroyed, at the Will of one, or a few Men, only to do that of which there is no need: For then *Jesus Christ* had delivered us up to be meer Slaves and Vassals to the Will and Humour of every wicked Tyrant, (which yet seem to disapp-

disapprove) without performing any of those great Ends, for which he at first enjoined this Submission: And tho' I grant that the Afflictions and Sufferings of Christians, on the account of Religion, are as particularly ordered and determined by God, as those of *Christ* himself; yet, it is only as they may be subservient to higher Ends, viz. the Propagation of his Religion, and the Good and Peace of Mankind; which I think cannot be well promoted by supposing an irresistible Power in the Prince or State, of rooting Christianity quite out of a Nation or Country, after it is settled by Law, and become the National Religion thereof, and of enslaving all the People of it whenever he pleases: And this I take to be the true Bounds and Limits of our Submission to the Supreme Powers in Matters of Religion. But supposing, not granting at present, that *Christ* hath laid any more strict Commands of Submission upon us in those Matters; yet since he came not into the World to put us into a more miserable Condition in other things, than we were before his coming; nor to take away or abridge us of any of those Natural or Civil Rights that we enjoy as Men or Subjects; therefore if the People had a Right before *Christ*, to defend their Lives, Liberties or Properties against the violent Assaults and Oppressions of Princes or States, they have still the same Liberty left entire in all Cases, which remain not excepted by the express Precepts or Example of *Christ*; since it is a general Rule in all positive Laws, that whatever is not excepted or altered by a subsequent Law, remains the same as it was before in all other Cases, which are not so particularly excepted: And therefore tho' I should grant that it were now unlawful in any Case to resist the Supreme Powers, who persecute or put Men to Death for bearing witness to *Christ's* true Religion; yet doth it not therefore follow that it were unlawful to resist in any other Case whatsoever, though it were in the defence of our Lives, Liberties or Properties; since such Defence was lawful (as I have already proved) before *Christ's* coming, and is not expressly forbidden by any Place of Scripture, or Command of *Christ* or his Apostles.

And without the Considerations of these great Ends that *Jesus Christ* had to enjoin his Followers an absolute Submission to the Supreme Powers in some Cases, (tho' not in all) were to suppose, that instead of a merciful Saviour, he had only come into the World to patronize Tyranny, and to render the Condition of Mankind much more miserable than it was under the Law of *Moses*, or in the State of Nature; and seems to suppose, that instead of commiserating Men's Sufferings, he only took delight to make them more miserable. Nor will it be any Comfort or Security to *Christians*, when they are once made Slaves under an arbitrary tyrannical Power, *That they are safe in God's Hand, and that all the Powers of Men or Devils cannot touch them, till God by a positive Decree appoint and order their Sufferings*: For if this were a good Argument against all Resistance, it would be so likewise against resisting Pirates or Robbers; since whatever we suffer from them is by God's positive Decree, who thus orders all our Sufferings even from them: And yet I think (since Men are not now to be saved by Miracles) he hath likewise also ordained Resistance as the only humane Means to prevent their Malice and Violence, or escape out of their Hands when we fall under them. Nor are the same Ends unlawful against any other humane Powers, but what God himself hath ordained.

And therefore it is a very crude Assertion, to say, that though there could not be more absolute Tyrants than the *Roman* Emperors, yet that they had no Power against the meanest Christian, but by an express Commission from Heaven; whereas I never knew as yet (and I would be very glad you could shew me) where this express Commission is to be found, whereby Princes, or other Supreme Powers, are authoris'd to persecute, enslave, or take away the Lives of the meanest Christians barely for Matters of Opinion, or Faults that do not immediately concern the publick Quiet and Safety: And as you have talk'd a great deal of the great Security it is to the World, that no Evil can happen to us but what God permits; and that he permits nothing but what he can over-rule to wise and good Ends; and that God may permit a great many Evils to befall us in his Anger and Displeasure; and that whatever Evils he appoints for us, they are certainly for our good; and that therefore there is no such Danger in the Doctrine of Non-resistance as some Men imagine; because sincere Christians can suffer nothing by it, since they shall suffer nothing more or less than what God appoints them to suffer. All these Arguments might as well be used for not resisting Pirates

or Thieves, or not endeavouring to divert or oppose a River that had run beyond its Banks, but to let it go where it lists, to the destruction of a whole Country, because forsooth, *sincere Christians can suffer nothing by it, for they can suffer nothing more or less than God appoints them to suffer*; indeed a wondrous use of Consolation. And therefore, unless you can prove that all Tyranny is ordained by God for our good; and that therefore we are obliged under pain of everlasting Damnation to submit to it; all that you have spoken concerning the Example and Sufferings of *Christ* signifie just nothing; so that I think the Absurdity still lies at your Door; since if *Christ* has not expressly forbidden all Resistance of the unjust Violence of Princes, (as I do not find he has by any of the Texts you have yet brought) *every Man may still defend his Life against him who you grant hath no Authority to take it away*; and as for its being forbidden by the Laws of our Country, I shall answer that when you urge those Laws to me.

M. I hope I shall be able to prove that by and by, but in the mean time give me leave to observe, that it seems very strange to me, that you should own *Christ* hath obliged his Disciples to submit without any Resistance, in some Cases, to the Supreme Powers, when they persecute them and put them to Death for Religion; and that they might not take up Arms in the defence of their Religion, which is the greatest concern that Men ought to have in this World; and yet that they might do it for much less considerable Matters, *viz.* their Lives, Liberties or Estates, which sure ought to be of much less importance than the Glory of God, which is chiefly maintained by his true Worship. But I see you have found a Salvo for this, and will not allow Princes the irresistible Power of Persecution, when the Religion is once settled by Law; that is, when the Christians were strong enough to resist, which certainly would be no thanks at all for their Submission, since Men, who are weak and unable to resist, must needs obey and suffer; which were matter of Force, and not of Duty: Whereas we find by *Tertullian*, and all the Ecclesiastical Historians, that though the Christians were strong and numerous enough in the Roman Empire, yet they chose rather to dye than to resist, as I shall shew you more particularly anon, when I come to those Quotations; but I will, if you please, now proceed to the two last Texts I have to cite to you out of *St. Paul* and *St. Peter*.

F. That we may not confound things one with another, I pray give me leave now to answer what you have objected against what I said last, before you proceed to any fresh places of Scripture; for though, in the first place, I doubt whether the *Non-resistance*, which *Tertullian* and other Primitive Fathers so strictly preached up, was founded upon any express Command of our Saviour or his Apostles; yet granting at present that *Christ* and his Apostles enjoyn'd it both by their Example and Precept, yet this does not reach the Case now before us; for there may be very good Reasons why our Saviour might enjoyn an absolute Submission to the Supreme Powers without any Resistance, though they persecute us, nay put us to Death, for Matters of Religion; and yet he may allow us greater Liberty for the defence of our *Lives, Liberties and Estates*, when assaulted by the unjust Violence of the Supreme Powers.

For *First*, Our Saviour ordained his Religion to be suitable to his Person, *viz.* a meek, humble, suffering Messiah, to be an Example of a meek and suffering Religion. *Secondly*, Our Religion is a thing that no Power in the World can take from us; Persecution indeed may increase it and render it more fervent, but can never diminish it, if it be real. And God hath expressly promis'd so great a Reward in another Life for our Sufferings for it in this, that it will infinitely outweigh all that ever we can suffer on that account. And *Lastly*, Our Saviour *Christ* was pleased to ordain his Doctrine to be propagated by Miracles and Sufferings, to distinguish it from all the false Religions that had been in the World before his, or that should be set up in opposition to it afterwards; since neither the *Pagan* nor *Mahometan* Superstitions, nor yet the *Jewish* Religion, can shew the like; to subsist, nay encrease for above three hundred Years under such great and cruel Persecutions; nor yet is the Glory of God at all diminish'd, but rather increas'd under Persecution, since none are then firm to it, but such as are really persuaded of its Truth, and that they ought to suffer the worst that can befall them, rather than forsake it.

And certainly nothing can tend more to the Glory of God, than to see it subsist and increase under a cruel and bloody Persecution; yet there is not the same reason that we should suffer Persecution after Religion is become the settled Constitution of a Nation; because then every Man hath the same Right to it as he hath to his Property or Freedom; and tho' a Man may part with either the one or the other, yet is he not obliged to give them up by Force, and whether he will or no; so likewise neither that Right which he hath to enjoy his Religion according to the Laws of his Country. And therefore I do not resolve the Obligation to *Non-resistance* in Matters of Religion, into the being the major part in a Kingdom, as you suppose; for if the Government of *England* were Popish, that is, the Legislative part of it, and the major part of the common People were Protestants; perhaps in that Case they were under all the Obligations of enduring Persecution without Resistance, as they were under the Heathen Emperors; but indeed the Primitive Christians were obliged to Non-resistance, because they lived under a Government in which Christianity was forbid, and Paganism established by Law.

And though it is true *Constantine* made several Laws, enjoining the free Exercise of the Christian Religion, and forbidding the Heathen Sacrifices, and that the Pagan Temples should be shut up; yet was not the Christian Religion, for all that, the sole Religion of the State; the very Senators of *Rome*, and the major part of the common People, continuing Pagans still. So that it seems the Christian Religion was all this while rather established together with Heathenism, than that this was wholly forbid; since all Civil Offices and Preferments were equally conferred upon Pagans as well as Christians, if they deserved them; and therefore it was no hard matter for *Julian* the Apostate to revoke so many of those Edicts his Uncle had made in favour of Christianity, and to abrogate those which had been published against the publick Sacrifices to the Heathen Gods, and shutting up their Temples: So that no wonder if they were now again under the same Obligations to suffer, as they were before *Constantine's* Time; since the Christian Religion was never the only one established by Law, so as to exclude the open Profession of any other, till the Time of *Theodosius*; after which (as also some time before) according as the Christian Religion increas'd, and as they got greater Privileges from the Emperors, so were they more stout and bold in standing up for and defending the just Rights of their Religion, whenever they thought them invaded by the *Arian* or other Heretical Emperors, as I shall shew you by several Instances out of Church History, when we come to it; but you may now, if you please, proceed to the rest of those places of Scripture which you have to produce against this Doctrine of *Resistance* in those Case I have put.

M. I have many things still to object against your last Discourse, but since it grows late, I shall now confine my self to the Doctrine of the Apostles concerning Non-resistance; not as if the Authority and Example of our Saviour were not sufficient of itself to make a Law, but stood in need of the Confirmation and additional Authority of his own Apostles, but we might justly suspect ourselves mistaken in the meaning of our Saviour's Words, or in the intention and design of his Sufferings, had none of his Apostles, who were immediately instructed by himself, and acquainted with the most sacred Mysteries of his Kingdom, ever preached any such Doctrine, as this of absolute Subjection to Princes. And therefore to give you the more abundant Assurance of this, I shall plainly shew you that the Apostles taught the same Doctrine, and imitated the Example of their great Master. I shall begin with *St. Paul*, who hath as fully declared himself in this Matter, as it is possible any Man can do by Words. *Let every Soul be subject unto the higher Powers, for there is no Power but of God, the Powers that be are ordained of God: Whosoever therefore resisteth the Power, resisteth the Ordinance of God, and they that resist shall receive to themselves Damnation.*

This is a very express Testimony against Resistance, and therefore I shall consider it at large; for there have been various Arts us'd to pervert every Word of it, and to make this Text speak quite contrary to the design and intention of the Apostle in it: And therefore I shall divide the Words into three general Parts. *First*, The Doctrine the Apostle instructs him in; *Let every Soul be subject to the higher Powers.* *Secondly*, The reason whereby he proves and inforces this Doctrine; *For there is no Power but of God; the Powers that be are ordained of God.* *Whoever therefore*

fore resisteth the Power resisteth the Ordinance of God. The Punishment of such Resistance, and they that resist shall receive to themselves Damnation. I shall begin with the Doctrine, That every Soul must be subject to the higher Powers; and here are three Things to be explained. First, Who are contained under this general Expression of every Soul. Secondly, Who are meant by the higher Powers. Thirdly, What is meant by being subject. First, Who are contained under this general Expression of every Soul; which, by an ordinary Hebraism, signifies every Man: For Man is a compounded Creature of Body and Soul, and either part of him is very often in Scripture put for the whole, sometimes Flesh, and sometimes Soul signifies the Man; and when every Soul is oppos'd to the higher Powers, it must signify all Men, of what Rank or Condition soever they be, who are not invested with this higher Power. And again, the design of the Apostle, as you shall hear more particularly by and by, was to forbid all Resistance of Sovereign Princes; and had he known of any Man, or number of Men, who might lawfully resist, he ought not to have express'd it in such general Terms, as to forbid all without Exception.

And therefore I shall now a little more closely examine your main Argument, or indeed Foundation of all that you have urged for Resistance, viz. That tho' it is unlawful for private or particular Men to resist the Supreme Powers; yet that it doth not extend unto the whole or major part of a People or Nation, whenever they are outrageously oppress'd or assaulted by the higher Powers, beyond what they suppose they are able to bear; whereas the Apostle here commands every Soul to be subject; and therefore if the whole Body of the People be subject to God, they must also be subject to the Prince too, because he acts by God's Authority and Commission. Were a Sovereign Prince the People's Creature, that might be a good Maxim, *Rex major singulis, sed minor universis*, That the King is greater than any particular Subject, but less than All together; but if he be God's Minister, he is upon that account as much greater than all as God is.

And that the whole Body of the People altogether, as well as one by one, are equally concern'd in this Command of being subject to the higher Powers, is evident from this Consideration, that nothing less than this will secure the Peace and Tranquility of humane Societies. The Resistance of single Persons is more dangerous to themselves than to the Prince; but a powerful Combination of Rebels is formidable to the most puissant Monarchs. The greater the number of Subjects that rebel against their Prince, the more do they distress his Government and threaten his Crown and Dignity; and if his Person and Authority be sacred, the greater the Violence is which is offered to him, the greater is the Crime.

Had the Apostle exhorted the Romans after this manner; "Let no private and and single Man be so foolish as to rebel against his Prince, who will be too strong for him; but if you can raise sufficient Forces to oppose against him, if you can all consent to depose and murder him, this is a very innocent and justifiable, nay, and heroical Achievement, which becomes a Free-born People: How would this have secured the Peace and Quiet of the World? How would this agree with what follows, that Princes are advanced by God, and that to resist our Prince is to resist the Ordinance of God, and that such Men shall be severely punish'd for it in this World or the next? For can the Apostle be thought absolutely to condemn Resistance, if he makes it only unlawful to resist when he want Power to conquer? which yet is all that can be made of it, if by every Soul the Apostle means only particular Men, not the united Force and Power of all the Subjects.

Nor can there be any Reason assign'd why the Apostle should lay so strict a Command on particular Christians to be subject to the higher Powers, which doth not equally concern whole Nations: For if it can ever be lawful for a whole Nation to resist a Prince, it may in the same Circumstances be equally lawful for a particular Man to do it; if a Nation may conspire against a Prince who invades their Rights, their Liberties or their Religion; why may not any Man by the same reason resist a Prince when his single Rights and Liberties are invaded? It is not so safe and prudent indeed for a private Man to resist, as for great and powerful Numbers: But this makes Resistance only a Matter of Discretion, not of Conscience. If it be lawful for the whole Body of a Nation to resist in such Cases, it must be equally lawful for a particular Man to do it; but he doth it at his own

Peril, when he hath only his own single Force to oppose against his Prince; so that our Apostle must forbid Resistance in all Men or none; for single Persons do not use to resist or rebel, or there is no great danger to the Publick if they do; but the Authority of Princes, and the Security of publick Government, is only endangered by a Combination of Rebels, when the whole Nation, or any considerable Part, for Numbers, Power and Interest, take Arms against their Prince. If Resistance of our Prince be a Sin, it is not the less, but the greater Sin, the greater and more formidable the Resistance is; and it would very much unbecome the Gravity and Sacredness of an Apostolical Precept, to enjoin Subjection to a few private Christians, who dare not, who cannot resist alone; but to leave a powerful Combination of Rebels at liberty to resist; so that every Soul must signifie all Subjects, whether single or united; for whatever is unlawful for every single Person, considered as a Subject, is unlawful for them all together; for the whole Nation is as much a Subject to the higher Powers as any single Man. Thus I am sure it is in our Government, where Lords and Commons assembled in Parliament own themselves the Subjects of the King, and have by publick Laws disclaimed all Power of raising any War, either offensive or defensive against, the King.

Ibid. p. 107.

Let us now consider what is meant by the Higher Powers, (*ἐξουσίαι ὑπερεχούσαι*), which signifies the Supreme Power in any Nation, in whomsoever it is placed, whether in the King, as in Monarchical Governments, or in the Nobles, as in Aristocratical, or in the People, as Democracies. At the time of writing this Epistle the Supreme Power was in the Roman Emperors; and therefore when St. Paul commands the Roman Christians to be subject to the higher Powers, the plain meaning is, that they should be subject to the Roman Emperor. And thus St. Peter explains it; *Be subject to every Ordinance of Man for the Lord's sake*, whether to the King as Supreme, *ὡς ὑπερχοντι*, the Word us'd in this Text, as to him who hath a supereminent Power, and is above all others, as also unto Governors that are sent by him, &c. From which Text Epiphanius proves that subordinate Magistrates under the King are ordained of God; and therefore that the Power of Under Officers, since it is the Ordinance of God, ought no more to be resisted than the King's, from whom it is derived.

1 Pet. 2. 13.

F. I hope I shall not be very tedious in answering your long Speech, since a small share of natural Reason and Grammar will do it; therefore, to be as short as I can, I do freely acknowledge, that not only private Men, but whole Nations, are, by this Precept of St. Paul, to be subject to the higher Powers, without any Rebellion against them, as well as particular Persons, as far as they are Powers ordained by God. And therefore it is necessary that you should consider what is the true signification of the Word *ἐξουσία*, which if it be once discovered, you will find it carries its own limitation along with it; for it excludes both the Usurpation of the Supreme Power, and also the illegal and wicked Exercise of it; and of this Opinion is the learned Dr. Sanderfon in his Lectures of the Obligation of humane Laws; where, in his fifth Lecture, §. 12. (as I remember) he speaks to this purpose, in answer to an Objection, *That then all those who have the power of the Sword; that is, of compelling those who are under their Power to perform their Commands, ought then to be obeyed in Conscience.* His Answer is to this purpose; "That the Power he means, and on which alonelies the Obligation of Conscience, is not that Power which the Greeks call *δύναμις*, that is, natural or physical Power or Force; or else that which is only *de facto*, by which any one is able to do whatever he pleases without any hindrance; but that Power which they call *ἐξουσία*, that is, lawful Power, or of Right; to wit, that which belongs to him that hath it by the Law of Nature, Nations, or Civil Constitutions, by reason of the Person who bears it, and in respect of those who are to be subject to it, To this *ἐξουσία*, or lawful Authority, the Apostle doth now so much press an exact Obedience, that he names it five times in the space of three Verses, but says not one word of this *δύναμις*, or Force. So far he. And if our Translators of this Place had rendered the Word *ἐξουσία*, Authorities, instead of Powers, as they have render'd it in other Places, and as they were fain to do in the first of Peter, ch. 3. ver. 22. where *ἐξουσιῶν* and *δυνάμεων* coming together in the same Verse, they render the former Word by Authorities, and the latter by Powers, which if they had constantly done, they had effectually prevented the false application of this Text; since no Man in his Wits can imagine, that when a Prince

(for

(for Example) destroys, oppresses and enslaves his Subjects, he acts thus as a lawful Power or Authority; or that belongs to him (as Dr. *Sanderſon* very well expresses it) by any natural or municipal Laws; much less can be the *ἐξουσία*; true or just Authorities or Powers which are here meant by St. *Paul* to be ordained by God; and that these Words may be so render'd instead of the Powers that are, appears from *Plato*, who more than once hath *ἡ ἀρχὴ* for *vera Potestas*, true Power or Authority.

*Vid. Lexicon
Scripturæ.*

So that if this Text were to be understood in your Sense, this Place of Scripture would serve to countenance and defend all the Tyranny, Cruelty and Oppression which the most wicked Tyrants can commit; all which must be ordained by God, by virtue of this equivocal Word Power. But that you may the better see the absurdity of this Interpretation, pray let us put these things into the Text instead of Powers, and see how it will run then. There is no Tyranny, Violence or Oppression committed by Princes, or their subordinate Officers, but what is ordained by God. Whosoever therefore resists this Power, resists the Ordinance of God. You'll say, perhaps, that this is not your meaning, yet is it the true Sense that must arise from your Interpretation of this Place; whereas it implies no more than God's approving all just and lawful Governments, and confirming from Heaven those moral Duties of Submission, Obedience and Non-resistance, which were always due, and must ever be, to lawful Authority; that is, such as are agreeable to the Laws of God and Nature, which you plainly see are not due to meer Force, Violence or Cruelty; for that is absolutely excluded out of the Text, which will by no means admit of it: The higher Powers or Authorities ordained by God having no Commission from him for any of these wicked Purposes.

M. I doubt, for all your Confidence, that you very much mistake the sense of these Words; for in the first place your (or rather your Doctor's) Criticism between *ἐξουσία* and *δύναμις*, will not do, for they both signify the same thing in Scripture, either Force and Power, or Authority, *ἐν ἧ ἡ ἐξουσιάζουσα ὑπὸ τινός*; I will not be brought under the Power of any thing, 1 Cor. 6. 12. must signify Force, and *δύναμις* must signify Authority and Dignity. Thus *Ephes. 1. 21. Ὑπεράνω πάσης ἀρχῆς, καὶ ἐξουσίας καὶ δυνάμεως καὶ κυριότητος*, which are several Names and Degrees of Dignity and Authority as well as Power. And in the second place you do much more mistake, when you suppose by this Word Powers to be meant only the true or just Exercise of Civil Authority, whereas the *αἱ ἐξουσίαι* are the *οἱ ἐξουσιάζοντες*, the Persons themselves who exercise Authority and Dominion, the *οἱ ἀρχόντες*, the Rulers, v. 3. the Ministers of God which bear the Sword, v. 4. in St. *Peter*, the *Βασιλεὺς* and *Ἡγεμόνες*, the King and his Governors and Magistrates, 1 Pet. c. 2. v. 13, 14. And therefore I must tell you, you do very ill to separate the Power or Authority from the Persons intrusted with it.

*U. S. A. S. p.
133.*

But suppose I should grant you that this Word *ἐξουσία* doth here signify the Exercise of Authority, yet doth it not signify the right and lawful use of this Power, but the Right to exercise this Authority; whether well or ill, 'tis all one, as to the Submission due to it; because no Resistance can be lawful for want of a superior Jurisdiction over it. The truth of this is evident from *John 19. 10, 11. Pilate* says to *Jesus*, knowst thou not that *ἐξουσίαν ἔχω*, I have Power to crucify thee, and have Power to release thee; *Jesus* grants it, and answers, *ἐν εἵχῃ ἐξουσίαν ἔδεξιαν κατ' ἐμὲ, ἐν μὴ, &c.* Thou couldest have no Power against me, except it were given thee from above. And therefore I shall reduce your Argument into the form of a Syllogism, that you may more plainly see the absurdity of it.

Ibid. 138.

Powers not ordained by God, may be resisted without danger of Damnation.

But Powers exercised tyrannically, are not ordained of God;

Therefore we are not forbidden to resist them.

In this Syllogism the Minor is not true; for though Tyranny be not the Ordinance of God, yet the Power or Authority (of which this Tyranny is but an Abuse) is of divine Institution; for tho' the Supreme Power is commanded to rule justly, yet is it withal enabled to act otherwise: for the good or ill use of it is left indifferent, in respect of the Subjects Subjection, though not of the Magistrates commanding or acting Power: So that the Abuse of this Power doth not make void the Authority, though acting contrary to the Laws of God or Nature. The Obligation not to resist the Supreme Powers receiving not any Validity from their Justice,

Justice, nor is it weakened or annulled by their Violence or Injustice. *Saul* was God's Anointed, and *Pilate* had his Authority from above, notwithstanding their high Abuse of it.

lib. p. 133.

So that upon the whole matter, I incline to believe, that the Reason which made *St. Paul* call the Magistrates by the *abstract Powers*, was this: He wrote to Christians living in the *Roman Empire*; and it was the Custom of the *Latin Tongue* to call Persons endued with Power, *Potestates*. You may observe it in *Ulpian*, *L. quid sit. D. de Ædil. edit. § 19.* And in *Augustin*, *Epist. 48.* who says, *Sive Potestas veritati favens aliquem corrigit, laudem habet ex illo qui fuerit emendatus, sive inimica veritati in aliquem sæviat, laudem habet ex illo qui fuerit coronatus*; and mark that, *Potestas inimica veritati*, must needs signify a Man abusing his Authority. And in *Juvenal* we read, *An Fidenarum Gabiorumque esse Potestas.* And in *Suetonius*, *Jurisdictionem de fidei commissis quotannis, & tantum in urbe delegari Magistratibus solitam, in perpetuum atque etiam per Provincias Potestatibus delegavit.* The modern Languages, *Italian* and *French*, which were bred out of the *Latin*, retain this antient way of speaking; for *Potestat* in old *French*, and *Podesta* in *Italian*, express not the Function only, but the Person who manages it. Thus antiently the *Latin Word* for the Chief-Justice, was *Justitia*, as you may find in *Glanvil*, *lib. 2. cap. 6.* and *Roger Hoveden's Annals*; so our King is called in the Abstract, *Majesty*, as the *Grecian Emperors*, *αὐτὰ βασιλεία.*

Many dangerous Consequences flow from thence; but I desire not to make Sport with that unhappy Distinction which had almost ruined as flourishing, and strongly temper'd a Kingdom as any in the Christian World. It exposes Magistrates, and all in Authority, to the Contempt and Injuries of the basest sort of People; for when discontented it is very obvious for them to tell them; though Reverence is due to their Function, yet, that setting their Office aside, they will take the Liberty only to correct their Persons; and that the Magistrate is not at all affronted, though the Man be soundly beaten. Indeed, it is against common Sense to put such a difference between the Person and the Authority of Kings; for if it were real, neither God, nor the Laws of the Land have made any Provision for the King's Safety; for his Authority is not capable of receiving any Benefit; and therefore it must be acknowledged by all sober and reasonable Men, that this Authority doth but convey such and such Privileges upon the Person who only can be sensible of them; and consequently whatever is attempted against his Person, is attempted against his Authority likewise.

F. I doubt you will have no better Luck in Criticisms than my self, and that they will do your Cause as little good: For if there be no difference in the Scripture between *ἐξουσία* and *δύναμις*, as you affirm; and that both of them signify, not the Authority alone, but the Persons endued with it, and that they are all from God; then *Tyrants* and *Usurpers* are ordained likewise by God, and consequently *Oliver Cromwell* was as much the *Ordinance of God*, as *King Charles*; and if this be your Doctrine, much good may it do you. But pray keep it to your self, lest if your Friends the *Old Cavaliers* come to know it, they will quite banish you their Company: Besides, I can shew you other Consequences that will follow from it, which I have not now a mind to urge, but may hereafter; for I have no mind to enter into that troublesome Debate any more; for I told you enough of my Mind concerning it the last time we met save one.

But since you will needs have these *ἐξουσίαι*, not to signify Powers or Authorities, but the Persons themselves, you shall have your Will for once; only I pray now answer me one short Question: When, for Example, *Charles the sixth*, King of *France*, fell mad, and would have killed his Servants, by what Authority did they distinguish and separate between his Person and his Power? and thought that they might well resist and bind the one without any Diminution to the other. Or by what Right did the *Portuguese* seize and imprison their late King, and make his Brother Regent in his room, but because the former used sometimes in a Frolick to murder his Subjects out of the Window, or as he met them upon the way; and was besides found, by reason of an incurable Folly, to be utterly incapable to govern? Pray tell me, did not the Servants and Subjects of these Princes then separate the Authority from the Person? If not, they must have let them alone to have done what they would, the Consequence of which you may easily imagine.

M. These

M. These Instances of the Folly and Madness of Princes are the main things that you Gentlemen of *Commonwealth Principles* have to defend them withal : But to shew you there is a great difference between *mad* or *foolish* Princes and *Tyrants*, who are in their right Wits, I will shew you my Reasons why the one may be bound or resisted, and not the other. In the first place, I suppose you will not deny, but that *Folly* and *Madness* do so far incapacitate the Persons that are under those Misfortunes, that they hinder them from acting like rational Men, much more from performing any of the Functions of *Civil Government*. In the next place, they ought to be restrained for the *Common Good* of their People, as well as themselves, lest they should not only murder and hurt their Subjects, but themselves too. And lastly, because it is the highest Courtesy and Benefit that can be done such mad, or foolish Princes, to *shut them up close*, and hinder them from exposing their Folly and Madness, and rendering themselves ridiculous to the World : Whereas a *Tyrant*, whom I suppose in his right Wits, though he never so much *enslaves* or *oppresses* his People, yet *Civil Government* may be well enough carried on and maintain'd under his personal Conduct ; and as long as he hath Wit and Sense enough to govern, he is so long to be *obeyed* as the *Ordinance of God*, without any Resistance whatsoever.

F. But this much I suppose you will not deny, but that this Power of resisting, and shutting up mad or foolish Princes, is wholly exercised by the Law of Nature ; since I never heard of any Civil or Municipal Law that made Provision for it.

M. I shall not much dispute that with you ; it may be so ; but what do you infer from thence ?

F. Why, no more than this, that if I can prove to you, that there is no such great difference between *Mad-men* and *Fools*, and habitual incurable *Tyrants* (as you imagine) ; there is a like Right in the People by the Law of Nature to resist and defend themselves against the one as the other ; and therefore I will examine each of your three Reasons one after another, and see whether they may not as well be applied to such *Tyrants*, whom alone I suppose may be resisted, as to *Mad-men* or *Fools* ; and if they do, I suppose you will not deny the Consequence. Your first Reason is, that Folly and Madness do so far incapacitate their Reasons that are under these Misfortunes, that they hinder them from acting like rational Men, much more from performing any of the Functions of Civil Government. Now pray tell me, doth not Anger, Lust, Pride, Cruelty, Wilfulness, Ambition, and unreasonable Self-love, which are the Passions and Vices which disturb the Souls of *Tyrants*, and make them take a delight to enslave, destroy and oppress their Subjects, as much incapacitate their Reasons for performing these Functions of Civil Governments, as Folly and Madness themselves ? And I think I have already proved, that when Princes bring things to this pass, they do as much deserve *Tutors* or *Guardians* to keep them from doing Mischiefs, and to manage their Kingdoms for them, as the most mad or foolish Prince we have read of in History. But the Mischiefs of it is, that such *Tyrants*, not being mad enough to be shut up like Mad-men or Fools, nor yet having Judgment, or good Nature, sufficient to perform the main Ends of Civil Government, by the greatness of the Rewards that they are able to bestow upon their Followers, may soon bring the best Government into a State of War and Confusion : And 'till then I do not allow their Subjects to resist them.

Your next Reason is, that they ought to be restrained for the *Common Good* of their People, as well as themselves ; lest they should not only hurt or murder their Subjects, but themselves too. Now pray consider, if these mad and foolish Princes may be restrained and resisted, because they only murder, or hurt a few of their Subjects that may come in their way, then have not such *Tyrants* much greater Reason to be resisted and secured, that through unreasonable Revenge or Superstition, make War upon and destroy the People, for no other Cause, but because they will not submit themselves to their unreasonable Lusts ? Or that burn Cities, massacre whole Towns of innocent Subjects, and enslave and oppress a late flourishing Kingdom ; ought not these as well to be restrained or resisted for the *Common Good* of Mankind, though perhaps they will not hurt

hurt or make themselves away, as Mad-men or Fools may? Or can any reasonable Man shew me, why the Extravagancies of such mad or foolish Princes may be resisted, but the furious wicked, and tyrannical Actions of the other, must be submitted to as the Ordinance of God? Or lastly, why a natural Infirmary or Weakness, such as Folly or Frenzy, shall make a Prince incapable of Government; and yet why insufferable Tyranny, which is a moral Disability, shall give Princes a greater Privilege not to be resisted, I cannot understand; since the latter is much more destructive to the main Ends of Government; *i. e.* the Preservation and Good of the People, than the former can possibly be.

As for your last Reason, that it is the highest Courtesy that can be done to such mad and foolish Princes to shut them up, and hinder them from exposing their Folly and Madness, and rendering themselves ridiculous to the World, I think the Reason will hold more strongly for the one, than the other. For as such foolish and mad Princes would, if they could come to themselves, thank those who had done them so charitable an Office as to resist them, and shut them up; so likewise, I verily believe, that if the Grace of God, or some natural Means or Accident, could so far open the Eyes of such a Tyrant, as to let him see the Folly and Wickednesses of those Courses he takes against the People, he would, instead of being angry, thank his Subjects for resisting him; because thereby they had not only hindered him from making himself any farther the common Hatred of his own Subjects, as well as his Neighbours; but also from committing such heinous Sins and Offences against God, as Murder, Violence and Oppression. To conclude; I grant, that as long as a cruel or wicked Prince can so far restrain his Vices and Passions, as to maintain the Ends of Civil Government above mentioned, he is to be obeyed as the Ordinance of God. But when he will set no Bounds to his Tyranny, but resolves that his Lust shall be unconfined, whereby he becomes insupportable to his People, they may as well distinguish his Person from his Power, as they do in the Case of Princes, when they are either Fools or mad Men.

M. But pray consider the rest of the Consequences of my last Discourse; and will not then the supposing a Power in the People of making this Distinction when they please, and of judging when the Prince's Government becomes intolerably Tyrannical, make them to take upon them to judge it so, when it is quite otherwise, and so not scruple to rebel, or to resist (as you call it) whenever they are in the Mind to do it? And we have the more reason to be afraid of this, because from the long Parliaments, and their Adherents, making use of this Distinction among other specious Pretences, were derived all the Miseries of our last Civil War. And therefore, though I own it is an easy thing to judge of the Madness and Folly of Princes, as well as other Men; yet (the Wickedness and Partiality of humane Nature consider'd,) it is a much harder Task to judge rightly what Actions of Princes are destructive to Civil Government, and render them as incapable of it, as the most extravagant Actions of foolish and mad Princes can be pretended to make them so.

F. If the Instance of Mad-men and Fools seems to displease you, because it is very pat to the Subject in hand, I think I may likewise remark, that those Inconveniencies you suppose of making the People Judges in this Case, is the sole Objection I can find you have against what I have said; for otherwise, I do not see you have any thing to alledge against the fitness of the Parallel. But I have already, I believe, made it pretty plain, that murdering, enslaving and robbing of the People of their Properties, are things as easy to be judged of as Folly or Madness: And if a few Domesticks about the Prince shall be allowed to judge when their Monarch is mad or foolish enough to be resisted and shut up, I cannot see any Reason, why the whole Body of the People may not as well be able to judge, when, by his Tyranny and Oppression, he hath dissolved the Government, and entred into a State of War with them.

But to return now to the last part of your former Answer, wherein you grant that this Word *ἐξουσία*, doth sometimes signify not only the Person, but the Exercise of Authority; but that it doth not signify the right or lawful Use of it, but Abuse too; and for the Proof of this, you alledge the Speech of *Pilate* to our Saviour; I am very well satisfied that that Text will make nothing for
your

your purpose : For though I grant that the Word in that place denotes Power or Authority, yet doth it not there signify the Abuse of it too : For certainly *Pilate* would never have told our Saviour, that he had a Power to abuse his Authority, and to condemn him, tho' innocent ; neither would our Saviour have answered him, that he had that Power from above. And therefore, I think I may very well maintain my Syllogism to be true, notwithstanding your denying of the *minor* Proposition. For since you cannot affirm Tyranny to be the Ordinance of God, yet that the Power or Authority, of which this Tyranny is but an Abuse, is of Divine Institution ; which is but a Fallacy, if it be look'd into. For though you may, vulgarly speaking, call all Tyranny an Abuse of Civil Power, yet some Tyranny is more than that : For it is not so properly an Abuse, as a Corruption of it into quite another thing, which God never instituted ; and consequently therefore is not to be submitted to out of Conscience. It is an old Saying, *Corruptio optimi, est pessima* ; and you may as well tell me, that Vinegar, notwithstanding its Acidity, continues Wine still, as that Civil Government, when it degenerates into the rankest Tyranny, continues still God's Ordinance : And if this be the true Consequence you draw from your Argument, it signifies little, *viz.* that the Abuse of this Power, doth not make void the Authority of the Law of God or Nature. For I think I may maintain the clear contrary to what you assert, *viz.* that the Obligation not to resist Supreme Powers, doth receive some Validity from the Justice they execute, and is weakened, and at last annulled, by their intolerable Violence or Injustice.

Nor are your Instances of *Saul* or *Pilate*, to the Question in hand : I grant *Saul* was God's Anointed, and could not have been lawfully resisted by *David*, notwithstanding his murdering of *Abimelech*, and the rest of the Priests : And *Pilate* might have his Authority from above, notwithstanding his Abuse of it : Yet doth it not therefore follow, that if either the one or the other had declared themselves sworn Enemies to the whole Nation of the *Jews* ; and that instead of governing and protecting them, they had gone about utterly to destroy them, I think they had then ceased to be the Ordinance of God, and their Divine Commission had been at an end. To conclude : As for the Reason you give, why *St. Paul* might call the *Roman* Emperors by the Name of *Powers*, I shall not deny it. But whether by the Word *ἐξουσία*, the Apostle means *Persons* or *Powers*, is much at one ; for if he means the former, he only urges Obedience to them as they are the means of the Happiness and Preservation of the People, as appears by the third and fourth Verses of the Chapter you now quote, where the main Reason *St. Paul* gives for our Obedience, is, That Rulers are not a Terror to good Works, but to the evil ; and that he, (*viz.* the Supreme Power) is a Minister to us for our Good : And indeed, it had been a very odd way of enforcing our Obedience, for him to have said the quite contrary, that this Power was to be obeyed, because he was a Terror to good Works, and a Plague to all good Men, and a Minister to us of all manner of Mischief and Misery. This had been indeed an excellent way of proving the Supreme Powers to be the Ordinance of God.

M. Before I can give you a full Answer to what you have now said, I must beg leave to look back to the beginning of your first Answer, where you object, that if by the Higher Powers here mentioned, the Persons, and not the Authority of those in Power, are to be understood, then it would follow, that Tyrants and Usurpers are likewise the Powers ordained of God ; which Objection, I think, may admit of an easy Answer :

First, " Can there be no wise Reason given why God may advance a bad Man (or Tyrant) to be a Prince ? If there may, then it is no Reproach to the Divine Providence. The Natural End of Humane Societies is the Preservation of Publick Peace and Order ; and this is in some measure attained even under the Government of Tyrants : But God hath a farther End than this, to bless and reward a virtuous Nation, or to punish a loose and degenerate Age ; and there cannot be a greater Blessing than a wise and virtuous Prince, nor a greater Plague than a merciless Tyrant : And therefore the Providence of God is as much concerned in setting a good or a bad Prince over any People, as in rewarding or punishing them. Upon this account God calls the King of

Isai. 10. 5, 6. " *Affyria, the Rod of his Anger, whom he raised up for the Punishment of an Hypocritical Nation.*

Ib. p. 121. Secondly, " I have already proved, that by the Powers in this Text, the Apostle means the Persons of Sovereign Princes; and therefore, according to his Doctrine, those Princes who were then in being, that is, the *Roman Emperors*, were advanced by God; *the Powers that be*, that is, the Princes and Emperors who now govern the World, are ordained and appointed by God, and that thus it is, God himself tells us: *I have made the Earth, and given it to whom it seemed meet unto me; and now I have given all these Lands into the hands of Nebuchadnezzar, King of Babylon, my Servant.*

This was also the Belief of the Primitive Christians under Heathen and persecuting Emperors. *Tertullian*, who wrote his Apology under *Severus*, asserts, that *Cæsar* was chosen by God, and therefore that the Christians had a peculiar Propriety in *Cæsar*, as being made Emperor by their God." So likewise *St. Augustine*, *De Civitate Dei*, speaks to this purpose (as I remember): " God giveth Happiness in the Kingdom of Heaven to the Godly alone: But this earthly Kingdom both to the Godly and Ungodly, as it pleases him. He that gave the Government to *Marinus*, gave it also to *Cæsar*: He who gave it to *Augustus*, gave it also to *Nero*: He who gave it to the *Vespasians*, Father and Son, most beloved Emperors, gave it also to the most cruel *Domitian*: And (not to recount the rest of them) he who gave it to *Constantine* the Christian, gave it also to the Apostate *Julian*. These things, without doubt, the only true God governed as he pleased, by Causes, though hidden, yet not unjust." So likewise almost all the rest of the Fathers do own, that wicked and tyrannical Princes are given as Punishments to the People for their Sins; and so upon this account are to be endured, and not resisted, since it is God's Will to have it so.

S.C.R. p. 128. But as for Usurpers, I think I can give you a very satisfactory Answer; " for the most prosperous Rebel is not the Higher Power, while our Natural Prince, to whom we owe Obedience and Subjection, is in being: And therefore, though such Men may get the Power into their hands by God's Permission, yet not by God's Ordinance; and he who resisteth them, doth not resist the Ordinance of God, but the Usurpations of Men. Whereas in Hereditary Kingdoms, the King never dies; but the same Minute that the Natural Person of a King dies, the Crown descends upon the next of Blood: And therefore he who rebelleth against the Father, and murders him, continues a Rebel in the Reign of the Son, which commences with his Father's Death.

Ib. p. 129. " It is otherwise indeed, where none can pretend a greater Right to the Crown than the Usurper; for there the Possession of Power seems to give a Right: Thus many of the *Roman Emperors* came to the Crown by very ill means; but when they were possess'd of it, they were then the Higher Powers: For the Empire did not descend by Inheritance, but sometimes by the Election of the Senate, sometimes of the Army, and sometimes by Force and Power, which always draws a Consent (and Submission) after it. And therefore, the Apostle doth not direct the Christians to enquire by what Title the Emperors held their Crowns, but commands them to submit to those who had the Power in their hands: For the Possession of the Supreme and Sovereign Power is Title enough, when there is no better Title to oppose against it; for then we must presume that God gives him the Irresistible Authority of a King, to whom he gives an Irresistible Power; which is the only means whereby Monarchies and Empires are transferred from one Nation to another: There are two Examples in Scripture which manifestly confirm what I have now said.

The first is in the Kingdom of *Israel*, after the Ten Tribes had divided from the Tribe of *Judah* and the Family of *David*, where God had not entailed the Kingdom upon any certain Family: For after *Jeroboam* the first King, it is plain by the Story in the Books of *Kings* and *Chronicles*, that for some Successions there was nothing but Rebellion, and the Murder of one King by another, so that the Kingdom rarely descended from the Father to the Son; and in the whole Succession of these Kings, it only remained in the House of *Jehu* for four Generations, and then it returned to its former Uncertainty, as you may see in the 15th Chapter of the 2d of *Kings*: All which plainly shews, " that where there is no regular Succession to a Kingdom, there Possession of Power makes a King, who yet

“ yet cannot afterwards be resisted and opposed without the Guilt of Treason :
 “ And this was the Case of the *Roman* Empire at the writing of this Epistle :
 “ And therefore the Apostle might then very well say, that *the Powers that be are*
 “ *ordained of God* ; and that whoever had the Supreme Power in his hands, was
 “ the Supreme Power, that might not be resisted.

But it was otherwise in the Kingdom of *Judah*, which God himself had en-
 tailed on *David's* Family, as appears from the Examples of *Jonah* and *Athaliah*,
 which we discoursed of at our last Meeting but one : Which Examples plainly
 shew, that no Usurpations can extinguish the Right and Title of a Natural or
 Hereditary Prince : Such Usurpers, though they have the Possession of the Su-
 preme Power, yet they have no Right to it ; and though God for wise Reasons,
 may sometimes permit such Usurpations, yet whilst his Providence secures the
 Persons of such deposed and banish'd Princes from Violence, he secures their Title
 too.

But to prove more plainly, that no Resistance is to be made against the Per-
 sons or Authorities of the Supreme Powers, let them be never so cruel and tyrann-
 ical, as it is evident not only from what *St. Paul* hath here written ; but I shall
 also crave leave to insist farther on that Text of *St. Peter* before cited, in his 1st
 Epist. 2d Chap. *Submit yourselves to every Ordinance of Man for the Lord's sake, whe-* 1 Pet. 2, 13, 14.
ther it be to the King, as Supreme ; or unto Governors, as unto them that are sent by him
for the Punishment of Evil-deers, and for the Praise of them that do well : Where by
Ordinance of Man, whether we understand, as some do, every Humane Law ; or
 with others, more justly, *ἀνθρωπίνῃ κτίσει*, every Humane Creature, (as it is in the
 Original) that is, every Man endued with Supreme Power, it comes all to the
 same Sense, and the King as the Supreme Power, and his Ministers or Officers,
 as Powers subordinate to him, and acting by his Commission, are to be submit-
 ted to and obeyed as much as himself : And it had been in vain for *St. Peter* to
 have concluded this Exhortation with *fear God and honour the King*, if he had al-
 low'd it lawful in any case to resist him ; since certainly no Man can honour him,
 whom he resists : And that this is a Doctrine everlastingly true, appears by the
 time in which *St. Peter* and *St. Paul* wrote these Epistles, which was either under
 the Reigns of *Claudius* or *Nero* ; and I suppose you will hardly meet with two
 worse Men, or more cruel Tyrants, in all the Catalogue of Emperors : Since the
 former committed many wicked and cruel things by his Freed-men and Officers ;
 and also banished the *Jews*, and Christians together with them, from *Rome* : And
 the latter is so notorious for his Cruelty, and Persecution of the Christians, that
 his Name passes into a Proverb. And yet these were the Higher Powers, to
 whom the Apostles commanded them to be subject. From whence you may see
 your Error in interpreting the *ἐξουσία*, to signify just and lawful Authority ; whereas
 it plainly signifieth in this place, the Men vested with this Authority howsoever tyrann-
 ically they abuse it.

E. You have made a pretty long Reply ; and I have heard it patiently, be-
 cause, I confess, that on this depends the whole Controversy between us : And
 therefore I shall beg that you would hear me with the like Patience ; because
 what you have now said, I grant to be of that weight, as to require a large, as
 well as a considerate Reply. And therefore I shall make bold to consider the last
 part of your Speech in the first place, because I can soonest dispatch it : As for
 your Argument, that we ought to be subject to the most tyrannical Governors
 without any Resistance, because *Claudius* or *Nero*, whom you suppose to be cruel
 Tyrants, then govern'd the Empire, and persecuted the Christians.

In answer to this, I must tell you, that if you please better to consider of it,
 you will find it very doubtful whether *St. Paul* wrote this Epistle to the *Romans* dur-
 ing the Reigns of *Claudius* or *Nero*. The Learned *Monsieur Capel*, in his Dis-
 course which he hath written, on purpose, concerning the Time of the Writing
 of this Epistle, proves this Epistle to the *Romans* to have been written during the
 latter End of the Reign of *Claudius*. But those Learned who will have it writ-
 ten during the Reign of *Nero*, do all agree, that it was in the beginning of it,
 within the first five Years, when the Administration of Affairs was under the Mi-
 nistry of *Seneca* and *Burrhus*, and when the Government of the Empire was most
 just and moderate, and divers Years before ever *Nero* burnt the City, or persecu-
 ted the Christians, and did so many extravagant, cruel, and tyrannical Actions, as

forced the Senate to declare him the Enemy of Mankind. But as for *Claudius*, he never persecuted the Christians at all, as I know of.

M. I pray, Sir, give me leave to interrupt you a little: Did not *Claudius* persecute the Christians, when under the notion of *Jews* he banished them from *Rome*, as appears by *Acts* the eighteenth, when *Aquila* and *Priscilla* were forced to quit *Italy* and come into *Greece*, because of that Edict? And yet it was this very *Claudius*, to whom *St. Peter* (if not *St. Paul*) doth require all Men to be subject without any Resistance.

F. I think this Difficulty will easily be answered; for in the first place, tho' I grant that *Claudius* towards the latter end of his Reign banished the *Jews* from *Rome*; yet did he not banish the Christians from thence, as we know of, any otherwise than as they were *Jews* by Nation; and upon this account it was, that *Aquila*, being a *Jew* by Birth, was forced to quit *Rome* with the rest: But neither *Suetonius*, nor any other Author, tells us, that he likewise banished the Christians, tho' I know indeed there are some learned Men that would interpret this Passage in the former Author, in his Life of *Claudius*: *Judeos tumultuantes, impulsante Cresto Roma expulit*; to be meant of the Christians being expelled *Rome*, as instigated by Christ their Prophet to Sedition. But tho' I own that our Saviour was sometimes called *Chrestus* by the *Pagans*, by way of Contempt, yet that by this *Chrestus* here mentioned, cannot be understood our Saviour Christ, is very evident; for it had been very improbable for *Suetonius* to have made Christ, who was dead above thirty Years before, to have excited the *Jews* to Sedition: And therefore the Lord Primate *Usher*, in the 2d Volume of his *Annals*, (with much better Reason) supposes, that not our Saviour, but some seditious *Jew* called *Crestus*, who headed this Sedition, was the cause of the Banishment of the *Jews* from *Rome*: So that this was no more a Persecution for Religion, than it would have been for the Parliament in King *Charles* the Second's Reign, during the heat of the Popish Plot, to have banished all the Papists out of *England* upon the account of their former Rebellions, and constant Machinations to overturn the Government, and Religion establish'd by Law: But supposing this Edict to have banished the Christians as well as *Jews*, it had signified nothing; for it was no Persecution for Religion: And besides, being made in the last Year of *Claudius*, it was but a temporary Edict; and we find the *Jews* to have lived quietly at *Rome* in the Reign of *Nero*, as appears by the last Chapter of the *Acts*.

But as for *Claudius's* Government, it was so far from being an insupportable Tyranny, that there was no Prince that did take more care to do impartial Justice, according to that small Capacity he was Master of, than himself. And tho' I yield, that by his Proconsuls, Presidents and Freemen, there were many Oppressions and Cruelties committed in the Provinces; yet it was only against some private Men, and did not extend to the destroying and enslaving the whole Body of the People, who during his Reign generally enjoyed their Liberties and Properties with as great Freedom, as under any of his Predecessors.

And as for *Nero*, all Ecclesiastical Historians agree, that if this Epistle of *St. Paul* was written in his Reign, it was within the first five Years of it, which was in his Non-age, under the Administration of *Seneca* and *Burhus*; during which time all prophane Historians agree, that the Empire was never better governed; and as for the Wickedness and Violence that *Nero* committed afterwards, when he persecuted the Christians, murder'd his Mother, his Wife, and most of his best, and most intimate Friends, and set the City on Fire: *St. Paul* was so far from knowing any thing of them, that sure he would not have urged it to the *Romans*, as a Reason of their Subjection to him, that *Rulers are not a Terror to good Works, but to the evil*, or that he was a Minister to them, that is, to the Subjects for good; nay, even in the worst of his Reign, as far as Justice was duly administered by himself, or his Under-Officers, I grant, he was not to be resisted, notwithstanding his Personal Crimes, which could only reach a few Persons, since a wicked Man may often make a tolerable Prince.

And though *Domitian* was in his own Person a cruel Tyrant, yet he was so far commendable, and to be born with by his Subjects, that during his Reign the Proconsuls, Presidents, and other Inferior Magistrates, were never freer from Corruption and Oppression: Whereas when *Nerva* (who was a mild good-natur'd Prince) succeeded him, by his too great Lenity towards those Inferior

Magi-

Magistrates, all things presently degenerated into a most sad Condition, Justice being sold and perverted, and the Poor robbed and oppress'd, by the Violence of the Rich and Powerful. And even *Nero* himself had this Commendation from his greatest Enemy, *Suetonius*, that he would not be governed by his Officers and Freed-men (as *Claudius* was) to do *foolish and unjust things*. So that if *Nero* himself had not by burning the City, and by murdering the innocent Citizens in the Night, made himself a publick Enemy; I do not see but his Government might very well have been born with, notwithstanding his Personal Crimes and Vices: For if you please to remember, I have already excepted Personal Faults in Princes, from being any just cause of resisting their Authority, if they are such as can any way consist with the Common Safety and Welfare of the People.

M. I must confess I never yet consider'd this matter, concerning the Time when *St. Peter* and *St. Paul* wrote these Epistles; and you'll pardon me if I do not readily allow what you say, but I promise you to consider farther of this matter, and examine the Authors you have quoted: But however, whether the Christians were then actually persecuted, or not, or whether these Emperors were then actually Tyrants, or not, signifies very little to me; for these Holy Apostles might very well foresee, not only by Divine Revelation, but by Natural Prudence or Foresight, that the Emperors would prove great Tyrants and Persecutors of the Church; and the late Example of the Emperor *Calgula* had shewed them not only the Possibility, but also the great Likelihood that it might happen again: And therefore it is no wonder, that these very Apostles do, in consideration of this, command all Christians to submit to, and obey all Supreme Powers, and their Subordinate Officers, upon pain of Damnation: And if *St. Peter*, in this Chapter last quoted, commands *Servants to be subject to their Masters, not only to the Good and Gentle, but also to the Froward*, (that is, to the Cruel and Ill-condition'd) and gives this Reason for it: *For this is thank-worthy, if a Man for Conscience towards God endures Grief, suffering wrongfully*: And enforces it with this great Motive, *For even hereunto were ye called, because Christ also suffered for us, leaving us an Example, that ye should follow his Steps*: And if Servants, or Slaves, were to be subject to their Masters, let them use them never so cruelly, it will, I think, hold more strong for Sovereign Powers, who are the immediate Ordinance of God.

F. You need not have made your Answer half so long, if you had been pleas'd to take notice, that I have still excepted any Resistance which might be then made against the Roman Emperors, upon the account of Persecution for the meer score of Religion; since I grant, that our Saviour hath, for those particular Reasons I have already alledged, commanded us to a patient Suffering, and bearing Testimony to the Truth of his Religion by Martyrdom, or any other Sufferings which he shall think fit to inflict upon us by lawful Authority, and for the like ends for which they were to suffer. Yet hath he not therefore taken away all those other Natural Rights, which whole Nations had of Self-defence against Tyranny and Slavery, whensoever they are exercised upon them. Nor doth your Argument from the Duty of Slaves to their Masters, at all concern Subjects, much less whole Nations: For, I hope, there is a great deal of difference between them and perfect Slaves, who having no power over their own Persons, and so had neither Liberties nor Properties to lose.

But besides, if you please better to consider this Text, you will find, that this did wholly concern such Christian Slaves who were for their Religion's sake oftentimes the more cruelly treated by their Heathen Masters: And therefore those Words you have but now repeated, *If a Man for Conscience sake suffers wrongfully*, as likewise those in the 20th Verse, *If you do well, and suffer for it*, can only be meant of Suffering for the Profession of Christ, since no Heathen Emperors, nor Masters, ever persecuted their Subjects, or cruelly treated their Slaves, for well doing; that is, doing those Duties and Services that they owed them; and therefore, this place makes nothing at all to the Question in hand.

M. But pray tell me, doth not the Apostle *Paul* expressly command every Soul, that is, every Man whatsoever, (not whole Nations excepted) *to be subject to the Higher Powers*? And since you grant it to be true as to particular Men, why it should not likewise hold as to whole Nations, I can see no reason, unless you will be wiser than the Apostle, and make Exceptions out of this general Rule, where the Scripture itself makes none: For can any thing be more express than this, *that*
they

they that resist shall receive to themselves Damnation ; and the Word is in the plural Number, *they*, and must therefore take in all Men, none excepted : I have urged this already, and finding you have not given me an Answer to it, I make bold to remind you of that Omission.

F. I beg your pardon, if the multiplicity of your Objections hath made me omit any thing that was material to be answered ; but the truth is, I suppose that I had in effect done it already ; but since you will needs have it made plainer to you, I hope you will pardon me, if in the doing of it I am forced to use some Repetition. Therefore in the first place, I shall not deny the Interpretation which our Translators put upon this Word *Κρίμα*, which tho' it sometimes signifies not eternal Damnation, but temporal Judgments ; yet I will own it will not well agree with what follows in this place, which are only temporal Reasons and Motives for this Duty. Now understand this Word *Κρίμα* in the Scripture Sense, and tho' I do it will be much at one ; for I have already proved to you, that whether you take these *ἐξουσίαι* for Powers or Persons, they are not absolutely irresistible, and I have St. *Chrysostome* on my side in the Interpretation of this Word, who understands no more by it, than that Civil Power or Authority is from God, but not the Tyrants or wicked Men that execute it ; but if it be taken for the Person endued with this Authority, I have also shewn you, that when they degenerate into intolerable Tyrants they lose their Character, and may be resisted as well as Mad-men and Fools. So much in respect of the Powers themselves, and now to come to the People : I think I have given very good reasons already, why a whole People or Nation, or the major part thereof, may have a Right to resist the Supreme Powers, and yet that I need not allow particular private Persons the same Liberty ; and one great Reason is, because they cannot, and the other because they ought not to do it. The first you yourself do acknowledge, since you say, *a private Person, when he makes such Resistance, doth it at his own peril, when he hath only his own single-self to oppose against his Prince. And that single Persons don't use to resist, nor is there any great danger to the Publick if they do.* To which I shall likewise add a much better Reason, which I have also given you before, why private Subjects ought not in a Civil State to make publick Disturbances, to avoid any Violence that may be done to their particular Persons or Estates, because every private Subject ought to prefer the Peace and Happiness of the Commonwealth, whereof he is a Member, before his own private Interest, which being a Dictate of the Law or Nature or Right of Reason, cannot extend to the whole Nation or Civil Society : since it is as much against the Law of Nature, for that to be destroyed, beggar'd and enslaved, as it is that God should ordain all Mankind to be so. And therefore our Saviour and St. *Paul* never intending to alter any of those great Laws of Nature, it cannot be believed that they would tie Mankind to such strict and severe Rules of Non-resistance and Subjection, as should expose them to Beggary, and Slavery, and Ruin, with all the Miseries of this Life : Nor do I find that either our Saviour or his Apostles have either promised eternal Life for such slavish Subjection, or threatned Damnation for such Resistance.

M. To answer what you have now said, I must in the first place take notice, that tho' I grant St. *Chrysostome*, for fear of making Tyrants and wicked Princes to be ordained by God, gives that Interpretation of the Word *ἐξουσία* which you have now done ; yet he owns the Doctrine of Non-resistance, because the Power is from God, as you may here see in these Quotations out of him, which the learned Primate hath made use of in the second Part of his Treatise of the *Power of the Prince*, which you may, if you please, read with me, and compare the *Greek* in the Margin : “ For it is the pleasure of God, that the Magistrate, whom he hath stamped with his own Image, should have also his own Power. And he that obeyeth not him, makes War, in a sort, with God who hath appointed these things. Let us not therefore invert this Order, nor fight with God ; demonstrating by our Deeds that Saying of the Apostle, *Whoever resisteth the Power, resisteth the Ordinance of God.*” So likewise in another Place, “ If we reverence and fear those Magistrates that are elected by the King, altho' they be wicked, altho' they be Thieves, altho' they be Robbers, altho' they be unjust, or whatever they be ; not despising them for their Wickedness, but standing in awe of them for the Dignity of them that did elect them ; much more ought we thus to do in the Case of God.” But it is no matter in what sense this, or any

any other Father takes these Words, so long as the Doctrine of Non-resistance is secure.

But it seems very strange, that you cannot find that our Saviour and his Apostles have neither promised eternal Life for slavish Subjection, nor threatned Damnation for Resistance ; for as sure as the Words are, that *they that resist shall receive to themselves Damnation*, so sure it will likewise follow, that they that do the contrary, and are patiently subject, shall receive eternal Life. I beg your Pardon for this Interruption, therefore pray go on with the rest of your Reply : And let me see how you can avoid Damnation, if the Words of the Apostle are true.

F. The Question is still the same as it was before, notwithstanding what you have now said ; for it is not, whether some Resistance be not unlawful, but whether all Resistance whatsoever be that Resistance forbidden by the Apostle. And to let you see that you do not put such a strict Interpretation upon other places of Scripture, pray tell me the reason why, when our Saviour expressly commands us, *Not to resist the Evil*, (that is, the Evil Doer) *but whosoever shall smite thee on thy right Cheek, turn to him the other also. And if any Man will sue thee at the Law, and take away thy Coat, let him have thy Cloak also. And whosoever shall compel thee to go a Mile, go with him twain. Give to him that asketh thee, and from him that would borrow of thee turn not thou away.* [Or yet those more severe Commands] *of pulling out the right Eye, and cutting off the right Hand, if they offend us ; of making ourselves Eunuchs for the Kingdom of Heaven's sake ; and that he that can receive it, let him receive it.* What is the reason, I say, why those places of Scripture, which taken literally, are as strict as this you now quote, *That they that resist shall receive Damnation* ; yet that most of the Fathers, as well as the more modern Commentators, put a figurative, and not a literal Sense upon these Texts ? Pray tell me your reason why they do so.

M. I think the reason is very plain, because to understand them in a literal Sense, were utterly unpracticable, and contradictory to the common Sense and Notions of Mankind, and those natural Dictates of Self-preservation, which St. Paul approves of, when he says, *No Man yet hated his own Flesh* ; and it was altogether unsuitable to the Doctrine of Christ, which was intended for the perfection of humane Nature, that is, of Men's Souls and natural Reason, and for the Quiet and Happiness, not Hurt and Destruction of their Bodies.

F. I grant your Reasons are very good and self-evident ; but pray tell me, is it not as much against the common Sense and Notions of Mankind, that God should give Civil Sovereigns an Arbitrary Irresistable Power to Murder, Destroy and Ruin their People, if they should think fit so to do, or that Jesus Christ, who, you say, came into the World for the perfection of our humane Nature, and not for the destruction of our Bodies, should give the Supreme Powers an Authority to do the same things with Murderers and Thieves ; and that it was unlawful for Men to defend themselves against their Violence, if they could. So that I can see no reason why this Precept against Non-resistance may not be taken in a limited or rational Sense, as well as *Swear not at all* ; which, tho' as express as Words can make it, yet Commentators interpret it to extend no farther than against swearing in common Communication. So likewise this Precept, *Children obey your Parents in all things* ; which without the reasonable Interpretation of all things lawful, would oblige Children to obey their Parents in whatsoever they commanded them, whether good or bad.

But to come to your Quotations out of St. Chrysostome, which you would oppose against mine ; I think they will not serve so much to your purpose as you imagine. For I grant that the Supreme Magistrate derives his Power from God, but not a Power to murder and destroy ; so likewise he that obeyeth him not, wars in a sort with God ; and that *whosoever resisteth the Power*, (that is, when it is executed according to God's Will) *resisteth the Ordinance of God* : And as for the last Quotation concerning the Reverence that is due to subordinate Magistrates elected by the King, tho' they are Wicked, Thieves and Robbers, &c. and consequently, much more the King who sends them ; this, tho' the strongest place of the three, yet will not do the Business ; for I believe you cannot suppose that St. Chrysostome there means that subordinate Magistrates, sent by the King, were really Thieves and Robbers, and took away Men's Goods upon the common Road, but only

only that by Bribery and Corruption in their Offices they did rob and peel the People, as much as if they had really been so; which extending only to some few Persons, was rather to be born with (as any intolerable Inconveniencies in Civil Government are) than for the People to take Arms and resist them. But I think the Case would have been much otherwise, had these subordinate Magistrates, by vertue of the Emperor's Commission, made use of his Forces to murder and rob the Subjects of those Provinces over which they were set; and that it would not have been any Rebellion in the People, if they should have taken Arms and resisted them, since the Emperors did not impower such Magistrates to murder or rob, but to protect his Subjects.

But to give you a Quotation out of *St. Chrysostome*, in lieu of yours, I shall shew you his Comment upon these Words in his 23d Homily on the *Romans*, "Let every Soul be subject to the higher Powers, (that is, says he) that Christ might shew that he had not instituted his Laws so, that he would overturn all common Policy and Government, but that he might reform it to the better, and might also teach us, that superfluous and unnecessary Wars were not to be undertaken, because it was then a common Discourse traducing the Apostles as Seditious and Innovators, and doing all things they could to overthrow the common Constitutions of their Country;" and therefore he stops the Mouths of the *Jews* and *Heathens* with these Words.

From whence we may infer, that *St. Chrysostome* did not believe that *St. Paul* wrote this only to give Tyrants a Power to do whatever they pleased against their Subjects without any Resistance; nor yet that Subjects should begin unnecessary and unlawful Wars, by resisting them upon every slight Occasion: Nor doth this Father here forbid Subjects to resist in cases of the highest Tyranny or Oppression that could befall them; so that I take the true Sense of these places of *St. Peter* and *St. Paul* to be no more than this; "Let every Christian submit to the Supreme Powers, *i. e.* to the Emperor, and all other subordinate Magistrates sent and appointed by him. For all *ἐξουσία* or Civil Authority is from God; and Magistrates justly exercising this Power are from him; and in his stead, all Supreme Powers, under whatever different Names or Titles they be, are by God's Providence appointed in the World, for its Order, Peace and the well Governing of it. He therefore that resisteth such Supreme Powers, whoever he be, resisteth the Ordinance of God," that is, the means that God hath ordained for the restraining the disorderly Lusts and Passions of Men. And they that will not obey their Laws, as far as the Laws of God or Nature may permit, but will resist, shall receive to themselves Damnation. And thus far even Tyrants and Usurpers may be obeyed, tho' not as such, but as Dispensers of publick Justice, and Executors of the Laws, and so are God's Ministers for Good; that is, for the publick Peace and Safety. But neither the *Apostle*, nor *St. Chrysostome* his Commentator, any where say, that either the Power, however exercised, or the Persons that thus abuse it to the Destruction of Mankind, are likewise from God.

M. But pray consider the Medium a little more closely, by which the *Apostle* proves and enforces this Doctrine of Subjection or Non-resistance. For, says he, *There is no Power but of God, the Powers that be are ordained of God. Whosoever therefore resisteth the Power, resisteth the Ordinance of God.* The plain meaning of which is this, That Sovereign Princes, whether good or bad, Tyrants or good Governors, being advanced to the Throne by God, are his Ministers and Vicegerents, invested with his Authority and Power to govern; and therefore when we resist our Prince, we resist the Ordinance, Constitution and Appointment of God; and such Men do not resist, rebel or fight against Man, but God; as he who resisteth any subordinate Magistrate, resisteth his Prince, from whom they receive their Authority and Commission. And this is a very forcible Argument for Subjection to Princes; for whatever our Prince be, it is certain that God hath an absolute and uncontrollable Right over us, as being the true Lord and Governor of the World; and if earthly Princes are placed in the Throne by him, who is at liberty to put the Government of the World into what Hands he pleases, who will dare to oppose God? or ask him, why hast thou done so? Whoever hath any sense of God's Dominion and Sovereignty, dares not rebel against him, and he who believes that Princes are made by God, will no more dare to rebel against his Prince, than against God himself;

himself; since (as I said before) evil Princes may be sent by God for a Punishment to a wicked People, as well as good ones for a Blessing to a pious Nation.

F. If you had pleased to have considered what I have already said, you might have spared this Objection; for it is no more than what hath been already answered; for tho' I grant that Sovereign Princes are advanc'd to the Throne by God, and are by him invested with Power and Authority to govern; and that when we resist our Prince, we resist the Ordinance of God; yet I desire to be judged only by your own Words in this matter; the Prince receives from God Authority to govern; but is the murdering, ruining and enslaving the People, any part of Civil Government? And when we resist our Prince, we resist the Ordinance of God; but is the resisting of an implacable Tyrant, and an Enemy of Mankind, resisting the Ordinance of God, or fighting against him? And I desire you only to consider the force of your own Comparison; for (you say) he who resisteth any subordinate Magistrates, resists the Prince from whom they receive their Authority and Commission; yet it is only in such things, which the Prince hath given them Authority or a Commission to do: As for Example, a Bayliff may arrest me for Debt by virtue of the King's Writ; yet if he goeth about to rob or kill me, I may lawfully resist him; and if I kill him, it is no Murder. The same may be said of all other subordinate Ministers, how great soever they are; there to carry on your Parallel, the same that subordinate Magistrates are in relation to Princes, the same are Princes in respect of God: Therefore if they never received any Commission or Authority from God to destroy and enslave their People; they so far cease to be the Powers ordained by God; and, sure, may then be resisted by their oppress'd People.

As for the rest of your Speech, as far as Earthly Princes are plac'd in the Throne by God, and govern there like his Vicegerents, I own they are not to be opposed; but since you will have them to be submitted to, because they may be ordained by God for a Punishment for a wicked People; I thank you for putting me in mind to answer what you have before said upon that Subject. I do not deny, but God may often, for the Punishment (as you say) of a sinful Nation, give them a wicked or tyrannical Prince; and likewise that such a Prince, when thus imposed by God, is to be born without Resistance, as far as is possible, or may consist with their being a People, and with those Enjoyments of Life, which are necessary to their being Subjects and Free-men, and not Slaves: And tho' I grant that God doth likewise sometimes punish a wicked Nation by appointing Conquerors, such as the King of *Assyria*, to carry them away Captive, and to reduce them to the lowest Condition of Poverty and Slavery, as in this Case of the *Jews* by the King of *Babylon*, who was then the Rod of God's Anger, and whom he raised up for the punishment of an Idolatrous and Hypocritical Nation. Yet when he doth so, excluding all farther Resistance in the People, it can only be known by divine Revelation, and cannot extend to all Conquerors whatever, whether by Right or Wrong. And therefore, as God doth often in his Anger deliver the People up to the Power of some cruel Conqueror or Tyrant; so likewise will he, in his good Time, and upon their Repentance, deliver them from it again. Now this Deliverance must be perform'd either by Miracles or humane Means; but Miracles are ceased, and therefore since only humane Means remain, these must be either, *First*, By changing the Hearts of such tyrannical Princes into a better and more merciful Temper towards their Subjects, as *Solomon* says, *The King's Heart is in the Hand of the Lord, as the Rivers of Water he turneth it whithersoever he will.* Or else *Secondly*, By taking away such a tyrannical Prince out of the World, and putting another in his stead, who may govern the People more mercifully, and who will not any more destroy or oppress them, as his Predecessors did. Or *Thirdly*, By stirring up some Neighbour Prince to revenge the Injuries and Oppressions done unto such a persecuted and almost ruined People; and to restore them to the enjoyment of their former Liberties, Religion and Estates. Or *Lastly*, By stirring up the People themselves to rise and resist those Oppressions they lie under, by their own single Forces, or by imploring the Assistance of some powerful neighbouring Prince or State. Now I suppose you will not deny, but that the First and Second of these Means very rarely happen; and as for the Third, we seldom find that when a former Prince is taken out of the way, his Successor grows so sensible of

the Tyranny and Mis-government of his Predecessors, as to let go any of that Arbitrary Power which he hath usurped, or to remit any of those intolerable Taxes and Oppressions which he hath laid upon them; but are commonly like *Reheboam*, when they come to the Crown, so far from making their People's Yoke more easy, that they rather lay it more heavy upon their Necks; as we may see in the Kingdom of *France*, in these three last Descents, where every Prince hath been still more severe and tyrannical than his Predecessor; for finding himself invested in this absolute and despotick Power, without any unjust Act of his own, he will exercise it as he found it, and will think himself not at all obliged in Conscience to restore any of those Rights his Predecessors had formerly usurp'd upon the People; since we find, Princes seldom lose any thing they have once got: And this may continue to all Generations, for ought we know, (which is much too long for a Punishment) unless some extraordinary Accident fall out, as we now see by the Example of the *Greek* Christians, who having lain divers Ages under the *Mahometan* Yoke, are now restored to the Liberty of their Religion, by the Arms of the *German* Emperor and *Venetians*; and are so far from being blamed for joining themselves to their Deliverers, that they are rather commended by all Christendom for so doing. And I see no reason why good *French-men*, as well Protestants as others, may not as justly join themselves to the Prince of *Orange*, or any other foreign Prince, who will be so generous as to undertake their Deliverance from that cruel Yoke they lie under, and will restore them to their antient Liberties, and the Protestants to the free Exercise of their Religion: Nor can I see any reason why God should deliver a People into Servitude whenever a tyrannical Prince hath sufficient Power to oppress them; and why God may not be as well said to deliver them, as often as the People find fit means and opportunity so to set themselves free. For doth such a Tyrant derive his Authority from God to oppress only because he hath Power? And may not the People likewise from the same Original, derive a Right to defend themselves against such an intolerable Oppression? Otherwise, God would chiefly regard and provide for this destructive tyrannical Power of Princes, as the chief end of all Civil Society, and make the Good and Happiness of the People a thing subordinate to that, or rather only by the by, which is contrary to Reason. 'Tis true, the Prophet *Amos* saith, *That there is no Evil in a City which God hath not sent*: So likewise are all natural Evils, such as Famine, Pestilence, Inundations and Foreign Enemies; and yet have not the People in these Cases a Power to rid themselves of them, if they can, by all natural humane Means? and yet they may be likewise Punishments sent from God. And if they may resist and decline such common and natural Judgments, without staying for an express Revelation for that purpose; why may they not for the same Reason rid themselves of such a Judgment as intolerable Tyranny, when they are able, and have an Opportunity to do it? since they proceed from the like common Dispensations of God's Providence. Or else we must believe that the Wickedness of one, or more Persons, for the Destruction of Civil Society, is more particularly derived from God, than the Power of the whole People for their own Preservation, and the common Good and Happiness of the Commonwealth: By which means Princes would have the same Power and Right over their Subjects Bodies and Estates, as they have over those of their Beasts, to sell, kill and devour them at their Pleasure.

Ch. 3. 6.

M. Tho' I grant it may be lawful for People to remove natural Judgments by humane Means; yet doth it not follow, that they may therefore remove by Force, such Punishments as God pleases to lay upon them from the Abuse of Civil Authority by the Supreme Powers, since he hath particularly enjoined them to bear such Punishments patiently without any Resistance, because they are inflicted by those whom God hath ordained for our temporal Governors and Masters, and whose Violences and Oppressions, as long as they continue in their Sins, God hath very good reason to continue upon them; and if they repent, they may be assured that in his good time, he will either remove them, or turn them to the best; for all things (even Afflictions) work for the good of them that fear him. And God will not suffer those that trust in him to be afflicted beyond what they are able to bear: And if this Doctrine of yours might take place, both Servants and Children, in the State of Nature, might, upon the like Pretence, both resist and turn their Father and Master out of Doors, because (forsooth) their Government was so severe
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and tyrannical, that it was not any longer to be endured by them ; and tho' ſuch ſevere Fathers or Maſters may be ordained by God for the Punishment of ſuch wicked Children and Servants ; yet that being no more than other natural Judgments, they may be without any Sin removed by Force or Reſiſtance, whether they thought themſelves ſtrong enough to do it : And if this Doctrine be wicked and abſurd in private Families, then is it much more ſo in Kingdoms ; for certainly there is a more perfect Subjection due to a Sovereign Prince, than to a Father or Maſter ; for he is more eminently the Miniſter of God, and acts by a more ſacred and inviolable Authority. And notwithſtanding what you have ſaid to the contrary, that the Precept given to Servants by St. Peter doth not concern Subjects, I think I can very well prove that it doth ; as appears from the Example of Chriſt, which the Apoſtle there recommended to our imitation, who was the moſt innocent Perſon in the World, and yet ſuffered the moſt barbarous Uſage, not from the Hands of a private Maſter, but of the Supreme Powers. And therefore, when he commands, in the ſame Chapter, *to ſubmit to Governors, as to thoſe who are for the Punishment of evil Doers, and the praiſe of them that do well* ; it is evident that he did not intend this as a Limitation of our Subjection, or as if we were not bound to be ſubject in other Caſes, ſince in the very ſame Chapter he requires *Subjection not only to the good and gentle Maſters, but alſo to the froward*, in imitation of the Example of our Lord, who ſuffered patiently under unjuſt and tyrannical Powers. I obſerve therefore, that the Apoſtle doth not alledge this as the reaſon of our Subjection ; but as a Motive or Argument to reconcile us to the Practice of it. The reaſon of our Submiſſion to Princes is, that they are advanced by God, that they are his Miniſters, that thoſe who reſiſt them reſiſt the Ordinance of God ; and therefore we muſt ſubmit for God's ſake, out of reverence to his Authority. But it is only an encouragement to Subjection, to conſider the great Advantages of Government, *That Rulers are not a Terror to good Works, but to the evil*. But tho' this Motive ſhould fail in ſome Inſtances, yet whiſt the reaſon of the Subjection laſts (and that can never fail while we own the Sovereign Authority of God) ſo long it is our Duty to be ſubject, whether our Prince do his Duty or not.

F. Altho' what you have now replied is no more, in effect, than a Repetition of what hath been ſaid before ; yet I forgive it, ſince your Cauſe will not admit no other ; nor can I ſee any reaſon why natural Judgments may be removed by Force or natural Means, but not Moral or Civil ones ; unleſs you could alſo prove, that it is God's expreſs Command, that we may remove the one, but not the other ; nor have you proved it otherwiſe than by telling me, that Princes are God's Ordinance, and are endued with irrefiſtible Power, all which hath been already conſidered, and I have already ſhewn you it is neither commanded by God, nor yet ordained by him for the common Good of Mankind. And tho' I own that Afflictions may ſometimes ſerve for a Punishment of a ſinful Nation ; yet it is as likely that ſuch a great and laſting Punishment, as a merciless Tyrant, may as well bring the People to Repentance, and when they are ſufficiently amended, they may very well enjoy the Benefits of it ; and they may as well expect that God will bleſs all lawful Means for that End, whereof I take Reſiſtance or Self-defence to be the Principal, ſince Miracles are ceaſed. And of this we have an Example in the ſecond of Kings, chap. 18. For tho' *Ahaz*, the Father of *Hezekiah*, had ſubmitted himſelf, and become Tributary to the King of *Aſſyria* ; yet when *Hezekiah* his Son turned to the Lord, it is ſaid, that he was with him, and that he rebelled againſt the King of *Aſſyria*, and ſerved him not ; and yet he was then as much ſubject to him, as *Jehoiachin* or *Zedekiah* were afterwards to *Nebuchadnezzar*. So that all that is new, in this Answer of yours, is only the fatal Conſequences that it would bring upon all Families in the State of Nature ; for then (forſooth) Children and Servants might likewiſe pretend, that the Government of their Fathers and Maſters were ſo inſupportable, that it was no longer to be endured, and ſo might rebel againſt them and depoſe them, which doth by no means follow ; for I have already proved at our firſt Converſation, that ſome ſort of Reſiſtance, for the preſervation of Life and Limb, may be lawful againſt the Outrages or Violence of a Father or Maſter of a Family ; yet do I by no means allow that they ſhould reſiſt them for any other Correction or ſevere Uſage which they ſhall inflict upon them ; ſince Servants or Slaves, whiſt they continue under their Maſters Power, can have no Liberty or Property of their own to defend ; and a Son, whiſt he

remains part of his Father's Family, I grant, differs not from a Servant ; so that all that ought to be done, either by Sons or Servants, in case the Government of their Father or Master grows so cruel and tyrannical as not to be endured, is to run away and leave the Family : And thus we read, that *Hagar*, upon the severe Usage of *Sarah* her Mistress, fled from her, nor was blamed by the Angel for so doing.

Nor is what you have now said, to prove the Subjection of Servants and Slaves to be as absolute the one as the other, at all convincing ; for I have long since proved that a Family and a Kingdom are very different things ; and that Oeconomical and Civil Power do not only differ in *Spiece*, but in *Genere* too. For tho' I grant, that Slavery might begin by Compact, as well as by War ; yet Subjection to Civil Power could regularly commence by Compact only : And therefore since the natural State of Mankind is that of Freedom from Slavery, all Subjects are supposed to be in that State of Freedom, and to have a Right both to their Liberties and Properties ; which, if the Supreme Powers go about forcibly to take away, they then cease to be so, since they take away the main end of their Institution, I mean, this of such a People, who are properly Subjects, and not Slaves : For of those who own themselves to be Slaves to their Prince, I told you already, I would not take upon me to meddle ; since I doubt whether such an Empire can be called a Civil Government or not : So that for all that you have hitherto said, I must still believe St. *Peter* did not direct this Precept to Subjects, but to Servants under the Yoke, that is, to Slaves, such as had no Property in any thing, nor Power over their own Persons, but might be sold and assign'd, with their Wives and Children, to whomsoever their Master pleased ; which tho' not of divine Institution, yet since it was so ordained by the Civil Laws of the Empire, neither Jesus Christ nor yet his Apostles would make any Alteration in it ; nor hath he thought fit to do so in any of those things which we enjoy as our Civil or Natural Rights, by the Law of Nature, or the Municipal Laws of our Country ; and therefore it is not true that there is as perfect a Subjection due to a Sovereign Prince as to a Master, unless the People of that Nation have made themselves absolute Slaves to him, instead of Subjects, which could never be but by their own Consent. It is true, a Prince is more eminently the Minister of God, and acts by a more sacred and inviolable Authority than a Master ; yet doth it not therefore follow that he acts as God's Minister, or by his sacred or inviolable Authority, when he destroys or enslaves the Subjects : Nor can you say that God hath given him any Authority so to do. And as for the Example of Christ's Suffering, which you urge as a Reason of our absolute Subjection to Princes, without any Resistance, I have answered that already, and therefore need say no more to it ; but do observe that in that great Point of suffering for Religion, when we are lawfully called therunto, we are to follow his Example ; yet doth it not prove that we are to suffer in all other Cases whatsoever, concerning which he hath given us no express Precept or Command.

M. I have something more to say to you about this Matter of suffering for Religion, but I shall defer it at present, and shall only now consider the evil Consequences of your Arguments for Resistance of the Supreme Powers in any Case whatsoever ; the Sum of which, if I can well remember, is to this Effect : Shall a Prince be free from all Correction till God Almighty is pleased to chastise him ? Must I sit still, and suffer my Throat to be cut, my Estate ruined ; and not dare in any Case to defend myself, till God is pleased to interpose ; and that in an Age in which Miracles are ceased ? God is for the most part pleased to respite the Punishment of Oppressors till the next World ; and if I be ruined in this, what comfort is it to me or mine, that the Injury shall be punished, when I shall reap no advantage by it ? Now suppose the Subjects of such a Prince should succeed in their Rebellion, and prevail against him, they must then submit to another Prince, of whom they have no more assurance they shall be better treated ; and if they set up many, they are all Men, and subject to be corrupted by Power and Greatness ; and in an Anarchy every Man will become a Tyrant to his Neighbours. So that this Doctrine of curbing and resisting Princes, is calculated for the ruin of Mankind ; and tends to no body's good but theirs, who design thereby to gain a Power of doing to others what they pretend to fear. And when all is done, the Punishment of Princes, who abuse their Power,

Power, must be left to God Almighty, who only can and will punish his own Ministers.

Now suppose all this were just as it is stated, if the Injuries a Man suffer are insupportable, under any Government he may petition for relief, and in all probability find it; if not, he may fly into another Country for succour; if he cannot do that neither, he will scarce be able to resist: So that if it were never so justifiable, it could be of no use to any such miserable Man; for no Prince, though never so ill natured, will attempt any such thing against any such number of Men, as are in a Capacity of revenging the Wrong done them when they will, only out of hopes they will not, because they ought not. Nor will the Histories of all Ages put together afford one Instance of a Monarch, that ever injured any Man at this rate, whom he believed able (if willing) to revenge the Wrong, but that he took care as far as he could to prevent it; and either to take him out of the way, or to put him out of a possibility of a Retaliation. So that all such discontented fretful Rhetorick is of no use in any such Case.

But then, on the contrary, if every Ambitious and Factions Man might be left at liberty to insinuate into the Rabble, and the great and little Vulgar, that Princes are to be punished when they do amiss; that they are bound to Act according to Laws, and to their Oaths; and if they do otherwise, are presently to be treated as Tyrants, and the common Enemies of Mankind; that it is lawful for a Man to defend himself against the Injustice and Oppression of his Prince, &c. This can only serve to fill the World with Rebellions, Wars and Confusions, in which more thousands of Men and Estates must of necessity be ruined, and Wives ravished and murdered, in the space of a few Days, than can be destroyed by the worst Tyrant that ever trod upon the Earth, amongst his own Subjects, in the space of many Years, or of his whole Life.

F. I perceive you think this place of Scripture will not carry you through; and therefore you would fain confute my Arguments by ridiculing them. But in answer to the Expedients you have now proposed, I think I may make this return. First, as for Petitioning when a Government grows insupportable; suppose then, the Prince declares he will not be petitioned in this Matter; but as the *French* King lately did, when the Protestants would have petitioned him against the Violation of the Edict of *Nantes*, will not hear or receive them; or suppose he lays any Man by the Heels, that shall offer never so humbly to petition him, either in his own, or the Peoples behalf, as King *James* lately served the Bishops; then this Expedient can signify nothing. As for the next, flying into another Country for Succour, that is a very sorry Comfort, that a Man must be forced to go and beg his Bread in a strange Land; and whatever this may be a Duty for private or single Persons, yet it cannot extend to a whole Nation; since if all the People should go away, the Commonwealth or Civil Society would be dissolved; and farther perhaps, as now in *France*, and in all Tyrannical Governments, it is commonly practised, the Prince should forbid his Subjects to go out of his Kingdom upon Pain of Death, or being sent to the Gallies; then I think this Expedient would signify nothing neither. But now, if nothing else will do, you say Resistance can be of no use for such miserable People, because a Prince will not dare to attempt any such thing against such a number of Men as are in a capacity of revenging the Wrongs done them, where they will only out of hopes, that they will not, because they ought not to do it. I grant indeed, that never any Tyrant, when he went about thus to oppress his People, designed they should be in a capacity to revenge the Wrong he did them when they would: And therefore such Tyrants take very great care by Guards and Standing Armies to prevent it. But yet I can shew you a Prince, who very lately received such Encouragement by the Writing and Preaching of our High Clergy, that he seem'd resolved to bring in Popery and Arbitrary Government upon us chiefly out of hopes that the People *would not*, because (as he thought) they *ought not* to resist: And tho' I also grant, that few Monarchs injure particular Men so much, but that, if they believe them able to revenge the Wrong, they will take care as far as they can to prevent it; yet this signifies nothing, if once a whole Nation comes to be oppress'd, and disgusted against the Government: For if such a Prince or Commonwealth have not the Assistance of some other Power, either his own Standing Army or his Neighbours, his Authority would soon be at an end. Thus we read

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of the Massacre and Expulsion of the *French* out of *Sicily*; it was done in the twinkling of an eye, and before those in Power had the least Suspicion of it. So likewise in the late Revolt of the *Portuguese* from the King of *Spain*, his Government was at an end in little more than a Day's time; and that Nation will tell you, that they look upon the Benefit of being governed by a Prince of their own, and enjoying their own Laws, as very well worth that Expence of Blood and Treasure they were at to obtain it. To conclude, I do not speak this to encourage the Rabble, or *great and little Vulgar* (as you call them) to take Arms, and punish Princes when they do amiss: Nor have I at all asserted, that Princes may be punished by their Subjects, unless you can prove to me, that every one who resists the Violence of another is his Lord and Master. Neither do I maintain, that tho' Princes are bound to act according to Laws, and to their Oaths, yet if they do otherwise they are presently to be treated as Tyrants, and the common Enemies of Mankind; or that it is lawful for every private Man to defend himself against the Injustice and Oppression of his Prince. I grant, such Doctrine would serve to fill the World with Rebellions, Wars, and Confusions, and may produce all those dreadful Consequences you have here set forth.

But on the other side, under such a Tyranny as where the whole People, or the major Part of them, shall happen to be assaulted, enslaved, and oppressed to that degree, that no Man can tell when he is safe; I say, in such cases a Tyrant may destroy more thousands of Men, ravish more Women, and ruin more Families and Estates, than it is likely to be done by the highest Resistance the People can make against him: Since they are mad if ever they make this Resistance, unless they are also morally sure, either by their own Strength or the Assistance of their Neighbours, of succeeding in the Attempt.

Nor do the Consequences of such Resistance but rarely fall out in the manner you suppose: For it seldom happens but that the new Prince, to whom the People submit themselves, will (being warned by the Example of his Predecessor) take care to govern with greater Mercy and Moderation; and it is much more unlikely, that if they chuse or set up many Representatives out of their own Body, that they will be presently corrupted by Power and Greatness thus to oppress the People; and lastly, it is much less probable, that the People can continue long in an Anarchy, without any Government at all. So that, to conclude, this Doctrine of resisting of Princes, or other Supreme Powers, in Cases of extremity, is so far from tending to the Ruin of Mankind, that I cannot see how they can be safe without it: And tho' the Punishment of Princes, who abuse their Power, may be left to God Almighty, yet I am confident the resisting of those, who tho' they have the Power of the Sword in their hand, yet act as none of God's Ministers, is neither contrary to the Laws of God nor Nature.

M. I perceive you want Testimonies out of Scripture to justify your Doctrine of Resistance, and therefore you are, when pressed by these, forced to fly to your old Refuge of Self-defence by the Law of Nature, in which tho' I have been forced to follow you, and quit the Method I proposed to my self; yet I would have you to know, it is not for want of more Texts of Scripture, and therefore I must still farther inforce the true Sense of that Place of the first of *St. Peter*: *Submit yourselves to every Ordinance of Man for the Lord's sake, whether it be to the King as Supreme, or unto Governors, as to them that are sent by him, for the Punishment of Evil-doers, and for the praise of them that do well.* "For this is the very same Doctrine which *St. Paul* taught the *Romans*, *Let every Soul be subject to the Higher Powers.* For the same Word is used in the Original, *υποτάγντε* and *υποτασσέσθω*; and therefore "to submit and to be subject is the same thing, which, as *St. Paul* tells us, signifies *Non-resistance*: Only as *St. Paul* speaks of not resisting the Higher Powers, "that is, Emperors and Sovereign Princes, he therein includes all those who act by "their Authority; and *St. Peter*, to prevent all Cavils and Exceptions, distinctly "mentions both, that we must submit to all Humane Power and Authority, not "only to the King as Supreme, that is, in *St. Paul's* Phrase, to the Higher Powers, to all Sovereign Princes, who are invested with the Supreme Authority, "but also to those who are sent by him, who receive their Authority and Commission from the Sovereign Prince.

F. You may spare your Pains for making so many Explanations on this Text; for I have already granted, that all due Submission is to be given, not only to the Supreme Powers, but also to all those who are put in Authority under him
them,

Chap. 2. 13,
Etc.

S. C. P. ch.
5. p. 141.

Ibid. p. 142.

them, and that *not only for Wrath, but Conscience sake* ; yet is this place to be understood in the same Sense as the former, that is, as far as they make use of this Power for the great Ends of Government, (*viz.*) the Good and Preservation of the People, and not for their Ruin and Destruction, by taking away their Lives, Liberties and Properties at their pleasure. So that this Precept is to be understood, according to the Reason which both *St. Peter* and *St. Paul* give for this Submission, because *Rulers are not a Terror to good Works, but to the evil* ; and because *such Governors are for the punishment of Evil-doers, and for the praise of them that do well* : And even a Government, where a Heathen Prince hath such Supreme Power, may, and doth most commonly, in respect to most of its Subjects, give more Countenance and Encouragement to good Works than bad ones ; and therefore Obedience to such a sort of Governors is not only lawful, but a Duty ; nay, though through Ignorance and Malice they might persecute the true Religion. For I have already proved, that at the time of Writing of these Epistles there was no actual Persecution begun by the *Roman* Emperors against the Christians ; and though they did afterwards persecute them, yet even such as did so, being commonly Men of good Morals, and having much of Goodness, Justice and Prudence in their Natures (such as was *Trajan*, and the two *Antoninus's*), they would not fail extremely to encourage the Practice of such, and other Virtues by their Examples, and by good Laws preserve their Subjects from the Mischiefs of Immorality, and keep them in Order, Peace and Sobriety. But is it so when Tyrants (be they Usurpers or not) not only govern contrary to, but also subvert all the Ends of Government ?

M. If this be the Sense you put upon this place, I think I shall easily shew you not only the Absurdity, but Perniciousness of this Interpretation, which indeed doth undermine all that Obedience and Subjection that is due from Subjects to their Sovereigns, unless they rule well, that is, according to their Humours or Fancies. Now, I pray, “ consider whether these great Apostles intended “ to oblige the Christians of that Age to yield Obedience to those Powers, “ which then governed the World. If they did (as I think no Man will be “ so hardy as to say, that they did not) then it will be proper to inquire whe- S. C. R. p.
149, 150. “ ther what they here affirm, and assign as the Reason of their Subjection, *That “ Rulers are not a Terror to good Works, but to the evil, were true of the then Roman “ Emperors and Governors, or not.* If it were true, then I believe it will hold “ true of all Kings in all Ages of the World ; for there cannot well be greater “ Tyrants than the *Roman* Emperors were at this Time : And so this will prove “ an eternal Reason why we should be subject to Princes, notwithstanding the “ many Faults and Miscarriages of their Government. And if it were not true, “ it is very strange, that two such great Apostles should use such an Argument “ to persuade Christians to submit to the Powers as only proved the quite “ contrary ; that they ought not to be subject to the present Powers, because “ they were unjust and tyrannical ; and which indeed, in Contradiction to the “ Original Design and Institution of Civil Power, were a Terror to good Works, “ and not to the evil.”

The Christians were at this time actually persecuted by the *Jews* in *Palestine*, and if they were not then also persecuted by the Emperors, yet it was that which they might daily expect, considering their extraordinary Wickedness and Cruelty : And yet the Apostle exhorts them not to *resist such Powers* ; because they were not, (that is, should not be) *a Terror to good Works, but to the evil.* “ If by this “ he only means that they should be subject to them, while they encouraged Ibid. “ Virtue and virtuous Men, but might rebel against them when they did the “ contrary ; how could the Christians of those Days think themselves obliged “ by this to submit to the higher Powers ?

“ For this was not their Case, they suffered for Righteousness sake ; the Supreme Powers were a Terror to them, though they were innocent ; though “ they could not charge them either with breaking the Laws of God or Men : “ And therefore, upon your Principles they were not bound to submit to them “ whenever they could find it safe to *resist*. So that either you put a false Com- “ ment upon the Text, or while the Apostle undertakes to deter them from “ Resistance, he urges such an Argument as was proper only to persuade them “ to rebel.”

F. Had you been pleased to have minded more attentively what I said last, you would not have thus misrepresented my Sense : For I have already proved, that there was no Persecution in the *Roman Empire* against the Christians when those Epistles were written, nor for many Years after ; And I have also granted, that if the Emperors had so persecuted them, they ought *not* to have resisted. And therefore, by good Works, and Evil-doers, &c. in both those Texts of *St. Peter* and *St. Paul*, is not to be understood, only believing in Christ, or behaving themselves as became innocent Christians, but in general that at that time when the Apostles wrote these Epistles under *Claudius*, and the beginning of *Nero*, (and indeed through his whole Reign where he governed by his Deputies) the Supreme Power was then really a Terror to evil Works, that is, to all Offences against good Manners, and the publick Peace of the Commonwealth, and were also a Punishment for Evil-doers ; that is, those that did transgress against the publick Laws ordained for the restraining Men from committing any sort of publick Wickedness or Immorality. So that I own that neither the Heathens, nor the Christians, had then any Reason to take Arms or resist the Supreme Power at this time.

But admit there had been at that time great Miscarriages and Abuses committed under their Government, and that good Men had been oftentimes punished, and evil ones rewarded, and the ends of Government to some degree perverted ; especially at *Rome*, where the Emperors took a Liberty of doing many unjust and tyrannical Actions : Yet I have no where (that I know of) affirmed, that Princes ought to be resisted only for being evil, or wicked ; or that all the evil Actions and Mis-government of Princes, or their subordinate Ministers, ought to be resisted, much less punish'd, by the People : But I have all along *SC.R. p. 153.* asserted the contrary ; for I own, “ that no humane Government can be so exact “ and perfect, but it may be guilty of Miscarriages.” Good Men may suffer, and bad Men may flourish under a virtuous Prince, much more under those that are themselves wicked and unjust. And there are many Degrees of evil Government and Tyranny, some of which may consist well enough with the common Safety of the People, which was the Condition of most of the Subjects of the *Roman Empire* under the Reigns of *Claudius* and *Nero* ; since they did then enjoy the Protection of the Commonwealth, and all the Civil Rights of Subjects. And therefore you very much mistake me in supposing that I maintain we are only bound to be subject to those Supreme Powers, who rule well, or who punish Wickedness, and reward Virtue ; since I grant this was scarce ever performed exactly, even under the most regular Governments : Yet there is a great deal of difference between bearing with the common Infirmities of all Governments, and such intolerable Violences that dissolve the Government itself, as by making War upon the People, and invading their Civil Liberty and Property. As for Example : No Man doubts, but the King may pardon a Robber, or a Murderer ; but if, instead of hanging, he should pardon all Thieves and Murderers that should rob or murder in a Year or two together, and should likewise *lift* them in his *Guards* to kill and rob whom they pleased, provided he had a *share* of the *Booty* ; I would very fain know of you, or any other reasonable Man, whether the People were bound to bear it ; and whether they might not resist them, though they had the King's Commission for so doing ?

To conclude : When the Apostle here says, that *Rulers are not a Terror to good Works, but to the evil ; and that they are for the punishment of Evil-doers, and for the praise of them that do well* ; the Apostle only means in general, the great Advantages of Civil Government for the Suppression of Wickedness, and Encouragement of Virtue, which is the true End, and the best Improvement of humane Power. But this also is in great measure obtain'd under evil, and (to some degree) tyrannical Princes ; and therefore this Argument for Subjection is good, even under a Tyrant. Publick Justice was administered under the Government of *Nero*, and good Men were then often rewarded, and bad Men punished. And though Justice be not so equally, and so universally administered under an evil Prince, as under a good one ; or, though such a Tyrant may oppress many of his Subjects, and be the occasion of divers Calamities, yet whilst the main Ends of Civil Government are maintained, it lays a sufficient Restraint upon the unguly Lusts and Passions of Men, and gives great Security to the Just and Innocent.

Innocent. And therefore, good Men are concerned to promote the Peace and Security of Civil Government, though the Prince be in some degree a Tyrant; for there is more Security to be had under such a Tyrant, than in a Civil War, or Anarchy.

In ordinary Cases it is very possible for private good Men to live easily and tolerably under a very bad Prince; and though it should be their Lot to suffer, yet since the Peace and Quiet of humane Societies is in itself so great a Blessing, and the publick Good may be better consulted by the Preservation of Government, than by Resistance; it becomes every good Man rather to suffer patiently under such a Tyrant, than to shake and unsettle Civil Government, and disturb the natural Course of Justice by Sedition and Tumults, for the private Interest of himself, or a few other Men.

Yet all this is to be understood of such Degrees of Tyranny, or evil Government, as may consist with the main Ends of a Civil Society, or Commonwealth; and as far as the publick Good of the People may be better consulted and preserved by the Preservation, than Resistance of it. And as I grant it to be every Man's Duty patiently to suffer many Injuries and Abuses, rather than to make any publick Disturbance; so on the other side, when the main Ends of Civil Government, viz. the common Preservation of the Peoples Liberties and Properties, are actually, or about to be destroyed, I think every honest Man, that his careful of his own, and his Posterity's well-being and Happiness, may, nay, ought (if no other Remedy can be had) to make Resistance, not for the Destruction, but Preservation of Civil Government, which I look upon as good as dissolved, before such Resistance can be lawful.

M. I must confess your Doctrine, as you have explained it, is not so bad as I supposed at the first hearing; but if People may never resist 'till things come to such a State, as that, by a general Invasion of Mens Lives, Liberties and Properties, the Civil Government be in a manner destroyed (as you suppose), the People may stay long enough before ever they shall be in a Condition to make this Resistance. For in all the small Observations that I have made out History, I never could find the People generally reduced to so sad a Case as this you have put: Most of the Rebellions, and Alterations of Government that I have read of, having begun from a few tyrannical Actions committed upon the Persons or Estates of some great and powerful Men, who being beloved by the People, were able to stir them up to revenge their particular Injuries. Thus one single Act of Lust in the younger *Tarquin's* ravishing *Lucretia*, gave occasion to *Brutus*, and her Husband *Colatine*, to take Arms against the King his Father, and by expelling him and his Family to set up a Commonwealth. And therefore, since this Case of such an extreme intolerable Tyranny, as you mention, can never, or at least very rarely happen, I think I may still maintain what I first affirmed, that it is much better to put this Mischief to the venture, and suffer all the Inconveniencies that may happen from it, than by allowing the People to be their own Judges, when the Government proves insupportable, to give them a Right of judging and resisting whenever they shall pretend that it is so; which they may make use of not to secure their own Liberties and Estates, but to gratify their own Humours, or else the Ambition or Revenge of great and factious Men.

" So that unless there is some Power that is irresistible, from whence there lies S. C. R. p.

" no Appeal, it is impossible for any Government to subsist. And though it 160.

" is not necessary that this Power should be always in the Hands of one Man, Ibid. p. 161.

" yet if God hath placed it in the Hands of a Prince, there it must be irresist-

" able too, however he uses it. For if once it be made lawful to resist the Su-

" preme Power where ever it is placed, you dissolve humane Societies, or at least

" expose them to perpetual Disorders and Convulsions. Factious and ambi-

" tious Men will still find Pretences to resist good Princes as well as bad, and

" no Government can be any longer secure than whilst ill-designing Men want

" Power to resist.

" Now then to pass a true Judgment on this whole Matter, we must not only

" consider what present Inconveniencies we may suffer from the irresistible Power

" of the worst Tyrant, but also what an irreparable Mischief it is for ever to

" unsettle the Foundations of Government. We must consider whether Civil

" Government be the greater Blessing to Mankind, or a Tyrant the greater

“Curse ; whether it be more desirèable to endure the Insolence and Injustice of the *greatest Tyrant*, when the Power falls into such a Hand ; or for ever to be deprived of the Security of Government, and the Blessings of Peace and Order. And therefore, there is great Reason why God should so severely forbid the Resistance of all Princes, though the cruellest Tyrants you can imagine ; and why we should quietly and contentedly submit to this Divine Appointment, because the Resistance of the Supreme Powers (were it once allowed by God) would weaken the Authority of all humane Governments, and expose them to the Rage and Frenzy of ambitious and discontented States Men, or wild Enthusiasts. And this, I think, is a sufficient Answer to this Pretence, that the Apostle limits our Subjection to Princes to the regular Exercise of their Authority.”

F. I see we are even come where we set out, to the Necessity of an irresistible Power, and the Mischief that must follow, if the People ever judge for themselves ; which indeed is but the same Argument in Politicks which the Church of *Rome* makes use of for the Necessity of an infallible Judge in Spirituals ; because otherwise, if the People judge for themselves in Matters of Religion, there would nothing follow but Anarchy and Confusion in the Church ; and that there would be as many Religions as there are Men. And so you likewise urge, that if the People may ever once come to judge when they are assaulted, enslaved or oppress'd, and should have a Right of making Resistance, nothing but Anarchy and Confusion must follow in the Commonwealth. And truly I think the Argument is as good for the one as the other : And as I hope we may be always good *Orthodox Christians* without such an infallible Judge in matters of Faith, so I think we may be loyal Subjects to our Prince without investing him with an irresistible Power of doing with us what ever he hath a mind to.

But since you have only repeated what you have said at our last Meeting, when we first began to debate this Question, so I must beg your pardon, if I refresh your Memory, and again repeat my Answers. In the first place, I deny that it must follow, that if once it be made lawful to resist the Supreme Power where ever placed, this must dissolve Civil Societies, or expose them to perpetual Disorder ; because (forsooth) some factious and ambitious Men will find Pretences to resist good Princes as well as bad. For first I have all along supposed the Commonwealth Civil Society as good as dissolved, before such Resistance is lawful : And therefore, the Convulsions or Disorders of a Civil War can scarce be worse than such a State ; and until the People are under this Condition, I grant factious and ambitious Men may make Pretences to resist good Princes, as well as bad, and may find some Followers as wicked as themselves to take their part. Yet this Infection seldom or never seizeth upon a whole Nation, who hath always Power and Affection enough for the Supreme Powers to join with them to suppress such Rebels. I grant, we ought always to consider whether Civil Government be the greater Blessing to Mankind, or a Tyrant the greater Curse ; and I do never suppose such Resistance to be lawful, but when the Power falls into such Hands, that tho' they may call themselves a *Civil Government*, yet the People are almost as totally deprived of all that Security, and those Blessings of Peace and Order, which they may justly expect from it, as if they were in a State of War. And therefore, as you suppose that God Almighty forbids the Resistance of the most cruel Tyrants, because this Resistance, were it once allowed, by giving the People a Power of judging, would weaken the Authority of humane Governments, and expose them to the Rage and Frenzy of ambitious and discontented States Men, or wild Enthusiasts : And this you think a sufficient Answer.

So on the other side ; if this Resistance be in no case lawful, though in never so great Extremities, and that the People must not judge when they are so cruelly used, as that it is no longer to be endured, not only the Persons of Princes must be sacred and irresistible, but also all those Instruments of Tyranny whom they may hire and employ to that purpose ; by which means all Government whatsoever will not only be absolute, but arbitrary, and without any sufficient Obligations to either Mercy, Justice and the Common Good, than what the tyrannical Will or Humour of one or more Men shall please to allow. So that

that the Lives, Liberties and Estates of a free People or Nation shall be in as bad a Condition as if they were Slaves, if all means of defending themselves by their own Resistance, or joining with those that would assist them, be wholly denied them. And whether God can ever be the Author of such an Institution, I appeal to your own Reason to judge, when you are in a more sedate and equal Temper.

M. I see 'tis in vain to argue this Matter any longer with you; and therefore I must tell you, that I cannot but look upon these Doctrines of *Passive Obedience* and *Non-resistance*, as true *Christian Doctrines*; since the ancient Fathers of the Church and Primitive Christians did always both believe, and practise them; and in Imitation of whom our own Church of *England*, (which, I think, of any in the World come nearest to the Primitive) doth likewise maintain it in her Thirty Nine Articles, Canons and Homilies; whereas you can shew me no express Text of Scripture, nor Testimonies of the Fathers, nor Examples of the Primitive Christians to justify this Resistance; which whenever you can do, I shall be of your Opinion: And if you doubt the Truth of what I say, I have here by me the Lord Primate *Usher's* Book of the *Power of the Prince, and Obedience of the Subject*; which you may, if you please, take home with you, and consult at leisure; in which I doubt not but you will meet with full Satisfaction in this matter.

F. I have already proved at our last Meeting, that Resistance for Self-defence against those who have the Power of the Sword, is a Right of Nature conferred by God on all Mankind: And unless you can shew me an express place of Scripture, which takes it quite away, I think I may very well maintain, that it is still left entire to us, and is not abrogated by the Law of the Gospel; and that it was lawful before our Saviour's Coming into the World, I have proved by those defensive Arms made use of by *David*, and the *Maccabees*. And as for the Testimonies of the Fathers, and the Practice of the Primitive Christians, of which the Reverend Primate hath made so ample a Collection in that Treatise you now shew me; I thank you for your *kind Offer* of it, but I do not now need it: For since I began to consider this Controversy with you, I have carefully read over that Treatise, and I cannot find that this vast Collection out of Prophane as well as Ecclesiastical Writers, will prove any more, than those Principles, which I own to be true, and yet will not impugn this I here defend.

In the first part of this Discourse it is proved by Scripture, as well as other Testimonies, that the Authority of all Sovereign Powers is from God, which I also allow; yet doth it not hinder but that the Consent and Submission of the People is a necessary Means or Condition of conveying this Authority, when God doth not please to make or nominate Kings himself. 2dly, That the Persons as well as Power of Sovereign, though wicked Princes, is also sacred and irresistible; yet this is to be understood whilst they continue to act towards their whole People as the Ordinance of God, and by vertue of that Divine Commission which they have received from him.

In the second Part of this Discourse it is proved from Scripture, Testimonies of the Fathers and other Authors, that particular Subjects are bound to obey the Supreme Powers in all lawful and indifferent things, or else to submit and suffer the Punishment in case of their unlawful Laws or Commands. As also to bear with any Violence and Injury that may be offered to them, rather than to disturb the publick Peace and Civil Government of the Commonwealth, which I also allow.

2dly, That in the Time of the Primitive Church, and before the Christian Religion was settled by Law, and become part of the Civil Constitution of whole Kingdoms and States, it was unlawful to resist the Supreme Powers in case of Persecution, though to Death it self, for the Testimony of Christian Religion; which I have also allowed through this whole Conversation. Yet none of these Quotations, as I can see, do reach the matter in Controversy between us, and assert it expressly to be absolutely unlawful for the whole People of any Kingdom or Nation to make use of defensive Arms, and resist the intolerable Violence and Tyranny of the Supreme Powers, if they shall happen to make War upon their People, and go about to take away and subvert the main Ends of all Government, viz. the Preservation of Mens Lives, Liberties and

Civil Properties. Neither do they any where assert, that in limited or mixt Governments, such as most of those now in *Europe*, where the People, by the Fundamental Constitutions of the Government, or the after Concessions of Princes, restraining their own absolute Power, enjoy divers Privileges and Liberties, unknown to those who live under absolute Monarchies : That such a People may not, upon the manifest Invasion of such legal Right by force, resist and defend themselves and their just Rights, against the violent Invasion of the Prince.

M. I cannot deny but you have fairly enough represented the Chief Heads, or Principles, which the Reverend Primate undertakes to prove in this excellent Treatise : And I think you have yourself granted enough to confute all you have already said. For in the first place, if it be unlawful for every particular private Subject to resist the Supreme Powers, it will likewise follow, that it will be also unlawful for a whole Nation : For a whole Nation is only a System or Collection of particular Persons, and Universals have no real Being in Nature ; but only in our Ideas : So that if it be unlawful for every particular Person to resist and defend himself in case he is injur'd and oppress'd, it must be also unlawful for a whole People, which consists of Individuals, to make such Resistance ; and it is a Rule in Logick, that *nothing can be affirmed of Individuals, which may not also be affirmed of the whole Species.*

So likewise if you grant, That the Primitive Christians ought not to have resisted the Supreme Powers in case of Persecution for Religion, I think it will likewise as well prove, that they ought not to resist upon any account whatsoever, since certainly there cannot be greater Wrongs or Violences committed in the World by Supreme Powers, than to allow them an Irresistable Power of putting those to Death that bear witness to the Truth of the Gospel, since a whole Nation may be as well thereby destroyed if they prove firm to the Christian Religion, and that the Prince continue obstinately cruel. And you might as well argue, that patient Suffering without Resistance ought not to be exercised in this case ; because it is destructive to Mankind, and the Quiet of a Civil Society, as to argue from the same Reason, that a whole Nation is not obliged to suffer without any Resistance ; when their Lives, Liberties and Properties, are invaded by the Supreme Powers. So that if the Primitive Christians might not resist the *Roman* Emperors, when they made so great a part of the People, and were so vast a Multitude in the *Roman* Empire in the time of *Tertullian*, as that he tells the Emperor *Severus*, in his Apology for the Christians, to this effect ; “ That had they a mind to profess open Hostility, and to practise secret Revenge, could they want Numbers of Men, or Force of Arms ? Are the *Moors*, the *Marcomans*, or the *Parthians* themselves, or any one particular Nation whatsoever, more in number than they, who are spread over the whole World ? They are indeed not of your way, and yet they have filled all the Places you have ; your Cities, Islands, Castles, Towns, Assemblies ; your very Tents, Tribes and Wards, yea the Palace, Senate, and Judgment-Seat.

Nor need I to mention at large the famous Story of the *Theban* Legion, who all of them suffer'd Death rather than they would either Sacrifice to Idols, or resist the Emperor's Forces, tho' they were between Six or seven thousand Men, and might have sold their Lives dear enough : And if an Emperor may murder so many thousands without any Resistance, I see no reason why he may not put a whole Nation of Christians to Death by the same reason.

Nor will one of your Reasons which you bring for it, signify any thing, that the Christians were to suffer without Resistance, because *Paganism* was then the Religion establish'd by the Law of the Empire ; for if a *Municipal Law*, as this was, ought to be over-ruled by the *Natural Law* of Self-defence, when they happen to clash, then the Christians who lived under the Heathen Emperors, might lawfully have taken up Arms against the Government, because they were deprived of their Lives and Fortunes against all Equity and Humanity : For to persecute Men so remarkably regular and peaceable, both in their Principles and Practices, is as manifest a Violation of the Law of Nature, as is possible. And if it was lawful for them to resist, then they seem bound in Conscience to do it whenever they had a Probability of prevailing : For without doubt it's a great Fault for a Man to throw away his Life, impoverish his Family, and encourage Tyranny, when he hath a fair remedy at hand.

F. If you had a little better remembred what I have already said on this Subject, you might have spared these Objections; for as to the first of them, it is rather a Logical Fallacy, than a true Answer: For in the first place, I have all along asserted, that no Man ought to give up his Right of Self-defence, but in order to a greater Good, (*viz.* the Publick Peace, and Preservation of the Commonwealth.) And therefore Dr. Fern, and others of your Opinion, do acknowledge, that David might have made use of defensive Arms to defend himself against those Cut-throats that Saul sent to take away his Life, though he might not have resisted Saul's own Person; and you yourself have already granted, that no Man can want Authority to defend his Life against him that hath no Authority to take it away. So that if this Law of Self-defence is sometimes suspended, it is only in Submission to a higher Law of preserving the publick Peace of the Commonwealth, or Civil Society, which being once broken and gone by a general Violence upon all Mens Lives, Liberties and Properties of that Nation or Kingdom, that Obligation of maintaining the publick Peace being taken away, every Man's Natural Right of not only defending himself, but his innocent Neighbour, again takes place. And therefore your Logical Maxim, that nothing can be affirmed of Individuals, which may not be affirmed of the whole Species, signifieth nothing in this matter; for every Individual had before potentially a Right of Self-defence, tho' they were under an Obligation not to reduce it into Act, till the Bonds of that Civil Society were dissolved; and then it is true, they do not then resist to maintain that Civil Government which is already gone, but to get out of a *State of Nature*, and set up a new one as soon as they can.

But as to your second Objection, which I confess hath more weight in it than the former, I shall make this Answer; That you yourself have given a sufficient Reason why a whole Nation, or Church, that professes the Christian Religion, cannot be destroyed by all the Malice and Persecution that can fall upon it by persecuting Monarchs; for you tell us, that it is the special Privilege of the Christian Church, above the rest of Mankind, that they are *God's peculiar Care and Charge*; and that he doth not permit any Suffering, or Persecutions, to befall them, but what he himself orders and appoints: And that it is a great Happiness to have our Condition immediately allotted by God. So that it seems it cannot be in the Power of the cruellest Tyrant utterly to destroy Christianity, in any Country where it is truly taught, by all the Persecution that he can use. This was the State of *Christian Religion* whilst it was in its Infancy; and in which we may observe more particular Declarations of God's Providence by Miracles, and the Divine Inspirations of his Holy Spirit, than after it was grown up, and that all the World became Christians. In its Infancy, 'tis plain that Princes could not destroy it, because it was supported by Miracles, and supernatural Means; but in the other State, when Christianity was once grown up, settled and able to shift for itself, by being made the Religion of the Empire, and the greatest part of Mankind embracing it in those and other Countries, Princes then could not destroy it if they would, because their Subjects had then a Right to it, and a Property in it, as much as they had to any thing else they enjoy'd, and consequently might be preserved by the same Humane Means. Thus during the State of the *Jewish Church* in the Wilderness, and for some time in the Land of *Canaan*, we find the Children of *Israel* fed, and deliver'd from their Enemies, by *Miracles*. But after they had been long settled in it, and had renounced the immediate Government of God, they were then left to preserve themselves by the same natural Means with other Nations.

And though I grant that such Persecutions, whenever they fall out, are very prejudicial to the Peace and Happiness of those Nations that labour under them; yet this is no sufficient Reason against Patient-suffering for Religion without Resistance: For since our Saviour is the Author of our Salvation, and hath ordained that it shall be propagated not by Force or Resistance, but by Sufferings; and that he hath promised us an *eternal Weight of Glory* for our submitting our Wills and Natural Affections to his Divine Commands; it is not for us to dispute the Reason of it, since that he who pleased to bestow upon us so great a Benefit without our Desert, might propose it to us upon what Conditions he pleas'd, though never so hard to be performed. Yet is this to be so understand, as that this Suffering for the Testimony of Christ, may serve for that great End for which he ordained

dained it, (*viz.*) the Propagation of his own true Religion, by our bearing Testimony to it, in our couragious and patient Suffering, which in a Kingdom or Nation where Christianity, or any true Profession of it, is become the general and National Religion, cannot now be supposed to be necessary. And this may serve also for an Answer to your last Reply: For though I own, that the Municipal Laws of Commonwealths cannot abrogate any of our Natural Rights, but only in order to some greater Good or Benefit tending thereunto; yet certainly the Reveal'd Law of God may, and doth in some case abridge us of divers of those Rights, which Men by the Law of Nature might have made use of.

But as for your Quotation out of *Tertullian*, tho' I have good reason to question the very Matter of Fact, since I can hardly believe, that how numerous soever the Christians might be, or whatever Mischief they might have done privately by setting the *City on fire* in the Night-time, which he also mentions a little before, as one of the Ways by which they might have revenged themselves: Yet do I not think, that they were then either for Strength or Number sufficient to have made any considerable Resistance, if they would, against the *Prætorian* Bands, and other standing Legions, which were then, if not all, yet for the greatest part Heathens: The most part of the Christians of those Times consisting chiefly of the meaner and mechanical Sort of People, altogether undisciplin'd and unarm'd; and so perhaps these Christians were under no other Obligations to Non-resistance, than what the particular Providence of God had brought them to, as these *French* Protestants, who remain still in *France*, are now under, that is, Obligations of Fear, and not of meer Conscience.

And as for your Example of the *Theban* Legion, though it is true they might have sold their Lives dear before they had been killed; yet would this Resistance have serv'd them to little purpose against the rest of the Army, which might consist of 30 or 40000 Men, all Heathen, and headed by the Emperor himself. But what if after all this stir about this Story, it should not be true? for *Eusebius* and *Socrates*, who lived nearer the time in which this Action is supposed to be done, make no mention at all of it, though they had very good occasion to do it. The first Writer that ever made any mention of this Story, was *Eucherius* Archbishop of *Lyons*, who did not write this Act of the Martyrs till above 150 Years after the thing was done; and he is also followed by one *Ado* in his *Martyrology*, who lived likewise some time after him, when writing of Legends began to grow in fashion. But granting all the Matter of Fact to be as you relate it, it proves no more than what I have already granted, that the Christians were at that time obliged to lay down their Lives for the Testimony of Christ, rather than to make any Resistance; but that this Precept is of a constant and eternal Obligation, when the Ends for which it was ordained, are no longer of any use, and when our Religion is establish'd by such Laws as the King himself cannot abrogate or dispense with, I utterly deny: And certainly, if you were not very much blinded with the Prejudice of these Notions of *Passive Obedience* and *Non-resistance*, you would not leave all the People of *England* at the Mercy of a Popish King, to be dragooned out of their Lives, Liberties and Estates, as the Protestants have been in *France* and *Savoy*, whenever the King shall please to put them to that severe Trial.

M. You have given me a very long, and I wish I could say a satisfactory Answer; and I see, provided it would serve your turn, you do not value how much you villify the Sufferings of the Primitive Christians, by making them not of Ability to make any considerable Resistance, if they would. Though *Tertullian* expressly affirms the contrary; and so you likewise take upon you to follow the Example of a late Doctor, and to question the Truth of the Story of the *Theban* Legion; which though it might not be committed to writing before *Eucherius* publish'd it, yet might he very well have received a faithful Account of this matter either by Tradition, or by some private Memorials that might be kept of it in that Church; since they suffered this Martyrdom not far from *Octodurum*, a Place now call'd *Martmarch* in *Vallais*, a part of *Switzerland*, and not far from *Lyons*; so that he might very well have a sufficient Information of such a remarkable Action as this was.

Nor doth what you say favour less of a *Latitudinarian* Principle, whilst you maintain, that a patient Submission to the Supreme Powers is not of constant and eternal Obligation in all Circumstances, which is contrary to the Opinion of the Primitive Fathers, and also of the Church of *England*. But if *St. Paul's* Doctrine be true, that we are *not to do the least Evil that Good may come*; and if our Saviour hath enjoined us, not to resist the Supreme Powers upon any account whatsoever, and also to *lay down our Lives* for the Testimony of the Truth, we ought certainly to observe his Commands, let the Consequence be what it will, though it were to the total Destruction of a whole Church, or Nation; Since God, if he pleases, may by the just Course of his Providence lay such severe Judgments upon us; who can also infinitely reward us for our patient Suffering of them in the Life to come.

F. I think I may, without any Crime, question the Truth of *Tertullian's* Account of the Power the Christians had to make any considerable Resistance in his time; for sure he may be out in such a nice Matter of Fact, since he could be guilty of such gross Errors in point of Doctrine: For before he turned *Montanist*, he was like our *Quakers*, and thought all Resistance, of what kind soever, unlawful; and therefore he tells us, in his *Apologetick*, *Idem sumus Imperatoribus, qui & vicinis nostris*; and a little after, *Quodcumque enim non licet in Imperatorem, id nec in quenquam*; and he likewise condemned all Flight in time of Persecution, as you may see in the Treatise he writ upon that Subject.

And as for the bare Practice of Primitive Christians, they are not of any general binding Example to us, unless the Principle they go upon be true; since I doubt not but many of them suffered Death out of a pure Desire of Martyrdom, of which *Sulpitius Severus* tells us, they were more covetous, than Men were in his time of Bishopricks; insomuch that it was a common thing even for Women and Boys to offer themselves to voluntary Martyrdom, that the Council of——— was forced to make a Decree on purpose to forbid it.

And as for the Truth of the Story of the *Theban* Legion, it not being recorded by any Writer of the Age in which it is said to have been done, I think a Man may very well question its Reality without any Suspicion of Heresy: And when I can see those Arguments answered by you, or any Body else, which the learned Doctor you mention hath brought against it, I will give more Credit to it than now I do. But you may call me a Person of *Latitudinarian* Principles as much as you please in this matter; until you are able to prove to me by better Arguments than you have done hitherto, that the Doctrine of Non-resistance in case of Persecution for Religion, is of constant and eternal Obligation, unless it be in the same Case in which the Primitive Christians were obliged to suffer, rather than resist; and till this be done, I fear not falling under *St. Paul's* Censure of *doing Evil that Good may come of it*: And unless God had in downright Terms commanded it, I will never believe but that I may have a very good Right, in such a Government as ours, to defend my Life against any one that would take it away upon the bare score of Religion; nor can I think it a Doctrine suitable to the Justice and Goodness of God, to ordain a whole Nation to fall as a Sacrifice to the Cruelty or Superstition of any one, or more Men.

But since you are pleased to urge me with Examples of Primitive Christians, who chose to die rather than resist or rebel against their Prince, pray give me leave likewise to tell you a few Stories, wherein these Primitive Christians have not shew'd themselves so staunch in this matter as you would make them.

In opposition therefore to your *Theban* Legion, I may set those Legions that composed the Army in *Gaul*, and which saluted *Julian* (afterwards the Apostate) Emperor, contrary to their Oaths of Allegiance to the Emperor *Constantinus*; renouncing which, they took an Oath to the former, whilst the latter was yet alive; and had certainly fought against him, and resisted him with a witness, had he not chanced to have died by the way, before they could meet to decide the Quarrel.

M. Pray give me leave, Sir, to interrupt you a little, though I cannot deny the Matter of Fact to be as you say, and likewise that this Army was for the most part Christian; yet they were, I suppose, drawn in partly out of Hatred to *Constantinus*, because he was an *Arian*, and partly out of Compassion to *Julian*, who was at that time upon very ill Terms with *Constantinus* his Kinsman, the whole
*Vi. Ammian.
 Army Alex. ellen. lib.*

Army suffering many Hardships for his sake, for whom they had a great Love and Esteem. But certainly their Loyalty to *Julian* is very commendable; for though immediately after the Death of *Constantius*, he openly declared himself to be a Heathen; yet notwithstanding that, and his Persecution of the Christians during his whole Reign, we cannot find that either the Soldiers, or any other Christian, ever resisted or rebelled against him; but that they look'd upon it as unlawful to resist him, may appear by several Authorities out of the Fathers of that time.

F. Since you cannot deny the Matter of Fact, you strive to extenuate it by their Hatred to *Constantius* for his Apostacy from the Catholick Faith; and the severe and rigid Treatment of *Constantius*: But if their Hatred to him, because he was an *Arian*, could make them join with *Julian* to rebel against him, pray tell me why they might not have rebelled also against *Julian*, after he had declared himself an Apostate from the Christian Faith? Could they have had such another Leader as *Julian* himself? But he reigned too small a time, and was too constantly at the head of his Army, to give them any opportunity to serve him as he had served his Predecessor.

And indeed this Army of *Julian's* was but too obedient to him, since we find that though they had been Christians before, yet at the time of *Julian's* Death they were then in Profession *Heathens*; for you will find in all the Ecclesiastical Historians, that when after the Death of *Julian*, they chose *Jovian* Emperor, he at first refused it, saying, that he being a Christian, would not command Heathens; whereupon they confessed themselves to be all Christians; but certainly this had been a very impertinent Objection, had they been publicly known so at that time.

And though I grant, *Julian* countenanced the doing of a great many violent things towards the Christians; yet it is certain that he never made any Sanguinary Laws against them, but rather forbid them to be put to Death, or to suffer any Hardship on the account of their Religion; though I confess the Heathens, because they thought it would be acceptable to him, put many Christians to Death by Force and Violence: So that however he might be pleased with it, and connive at it, yet did he never enact it by any publick Law, or Edict; or if he had, do I allow the Christians a Liberty to have taken Arms, and resisted him upon the account of Religion? For though I own, the Christian Religion had been establish'd by Law by *Constantine* the Great, yet was it not so thoroughly settled as to forbid the free and open Profession of the Pagan Superstition; the Heathens being admitted to all Offices and Commands, as well as the Christians, and might freely perform all the Rites of their Superstition, publick Sacrifices to their false Gods only excepted: So that if *Constantine* by his Edict could without any Rebellion, shut up the Heathen Temples, and give the Christians the publick Liberty of professing their Religion, why should not *Julian* have the like Privilege, since his Power was alike supreme and absolute, to recall those Edicts, and to make quite contrary ones, if he had so pleas'd?

And though I also own, that the Christians did not actually rise in Arms against *Julian*; yet that there were many of them would have done so, is very likely, since they openly pray'd for his Destruction, and gave him very undutiful, sawcy, nay reproachful Language, upon the account of his Apostacy, whenever he came in their way. And thus some of those who are called Fathers, were of an Opinion, that an Apostate, though an Emperor, might be put to Death. Pray read, what I have lately transcribed out of the Writings of *Lucifer Calaritanus*, (whom

St. *Jerom* calls a Man of a wonderful Constancy, and of a Mind prepared for Martyrdom) who writing to the Emperor *Constantius*, says thus to him: "Pray shew but one of the Worshipers of God, that ever spared the Adversaries of his Religion: And then he reads him his own Doom out of *Deut. 13. 1. If there rise among you a Prophet, or a Dreamer of Dreams, saying, let us go after other Gods* (for the Orthodox always charged the *Arians* with Idolatry) *that Prophet, or Dreamer of Dreams, shall be put to Death.* You see what you are commanded to suffer." [And again,] "Hear what God hath ordained by *Moses*, is to be done with you, for perswading me to revolt from God, *Deut. 13. 6. If thy Brother, the Son of thy Mother, or thy Son, &c. incite thee secretly, saying, Let us go, and serve other Gods, thou shalt surely kill him, &c.* Here it is commanded, that my Brother

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“ shall be put to Death for inviting me to forsake God.” [And in pursuance of this Doctrine, he tells him a little further to this purpose ;] “ That if he had been in the hands of *Mattathias* or *Phineas*, and should have gone to live after the manner of the Heathens, without doubt they would have kill’d him with the Sword, which he repeats twice for fear he should forget it.

And this Treatise being sent for by the Great *Athanasius*, and being by him perused, he was so far from condemning any thing in it, that, as you may see in his Letter to this *Lucifer*, (which is in the same Volume from whence I transcribed this) he highly praiseth him for writing it, and calls his Book, *the Doctrine of the true Faith*, besides many other Commendations, too long here to be repeated. And as for *Julian* himself, *Sozomen* the Ecclesiastical Historian, writing of the manner of his Death, says, that it was believed by many that he was killed by some Christian Soldier of his Army, whom he applauds for so doing.

M. I cannot deny but the Carriage of some Christians of those Times, even of those who are called *antient Writers* or *Fathers*, might be too undutiful, and may be attributed to the morose, monastick Temper of the Father you have quoted, though a great deal of this sort of Carriage may be attributed to that Christian Zeal which the *Jews* called the *Spirits of Fortitude*, and the *Greeks* call *παρρησία*, which we render *Boldness* or *Confidence*, and which did often transport them to say those indecent things to persecuting Kings, or their Governors, which had been insufferable in any Man else on another occasion ; and this was not only in Words, but Actions too. Thus when the Emperors *Numerianus*, or *Decius*, (for my Author doth not know which it was) would have entred into the Cathedral Church of *Antioch* in time of Divine Service, *Babylas* the Bishop, standing in the Church-porch, shut the Door against him, telling him, that he would not suffer him, who was a Wolf, to enter into the *Sheepfold of Christ*. And we also read, that *Valentinian* (who was afterwards Emperor) being then an Officer under *Julian*, and waiting upon him to the Door of a Heathen Temple, gave the Priest a Box on the Ear, because he offer’d to sprinkle him, being a Christian, with his prophane Holy Water : Yet I confess, *Theodoret* commends the Action ; and says, *they after chose that Valentinian Emperor, him who had before struck the Priest* : And therefore, I wonder to what purpose you quote such Passages out of antient Writers, and the Actions of Primitive Christians, which, if you are a Man of that Loyalty or good Breeding, as I hope you are, you will not yourself approve of.

F. I do not tell you I quote them for our Imitation ; but only to let you see, that the Actions of those you call Primitive Christians and Fathers, are not by your own Confession to be the only Pattern for us to follow ; so that indeed their Practices can signify nothing to us, unless the Principles they acted by were suitable to the Laws of God and right Reason ; unless you will have no Precedents to be good, but what shall suit with your Humour, and those Principles you have already imbibed : And if *Babylas* the Martyr might, without any Sin, shut the Emperor out of the Church by force, and that *Valentinian* was commended for striking the Emperor’s Priest on the Face, I think here are by your own Confession two sufficient Primitive Examples of Resistance, both of the Emperor’s Person, as also of those commission’d by him, as certainly this Priest was, or else he could have had no Right to have exercised his Idolatrous Worship, after the Temples had been shut up under *Constantine* and *Constantinus*.

But I now desire your Patience to let you see, that not long after these Times, the Christians, as well Soldiers as others, were not so through paced in these Doctrines of Passive Obedience and Non-resistance, as you would make them ; for it was by the Power of the Christian Legions in *Britain*, that *Maximus* took the Boldness to rebel against the Emperor *Gratian*, and making himself Emperor, marched into *Gaul* against him ; where the poor Prince being also deserted by his Christian Army, and forced to fly away with a few Followers, was not long after murder’d by *Andragathus* ; after which, this *Maximus* had so good Success, that he possess’d himself not only of *Britain*, but *Spain*, *Gaul*, and part of *Germany* ; and was also acknowledged for Emperor by all the Subjects in those Provinces, as well Clergy as Laity, though the Emperor *Valentinian*, the Son of *Gratian*, was then alive. And all the Bishops making their Applications to him, desir’d him to call a Council in *Gaul*, to suppress the Heresy of *Priscillian*, which he did in compliance with their Requests ; wherein they condemn’d that Heretick, and his Fol-

lowers, of Heresy; who afterwards (at the instance of *Ithacius*, and some other Bishops) were by this usurping Emperor condemn'd, with divers others, to suffer Death; being the first that ever suffer'd that Punishment for Heresy. This *Maximus*, after five Years Reign, was overcome, and kill'd in Battel by the Emperor *Theodosius*, who restored that part of the Empire to *Valentinian II*.

And farther, to let you see that the common People of these Primitive Times, though they were not able to make Emperors so well as the Army, yet they were not so strait-lac'd as not to resist the Emperor's Orders, whenever they thought they entrench'd upon their Religion, or that they went about to persecute them for it: I can give you a great many Examples out of Ecclesiastical History, of which *Lib. 2. ch. 30.* I will only here set down some few: The first is out of *Socrates*, *Eccl. Hist.* when the Emperor *Constantius*, at the Instigation of *Macedonius* the *Arian* Bishop, had perswaded him to send some Bands of Soldiers into *Paphlagonia*, to terrify the People, and make them turn *Arians*. The Inhabitants of *Mantinium*, enflamed with a Zeal for the Orthodox Religion, marched against the Soldiers, with a good Courage; and having provided themselves with the best Arms they could, they gave them Battel; in which few or none of the Emperor's Soldiers escaped. And though I confess, (the Historians say) these People were most of them *Novatians*; yet this Action ought not to be condemned only for that Cause, since they were rather look'd upon as Schismatics than Hereticks, and were in all things else, except that one point, about reconciling the Lapsed, very Orthodox; but in all other things were more strict and scrupulous, than the Catholics themselves.

So likewise, when the Orthodox at *Constantinople* had chosen *Faul* for their Bishop, but the Emperor resolving to make *Macedonius* Bishop in spite of their teeth, and had sent *Philip*, the President, to fix *Macedonius* in that See; as he was about to give him Possession of the Church, though they were guarded all along with Soldiers, yet when they came near the Door, the People made that Resistance, that they could not get in till several thousands of them were kill'd.

And some Years after, when the Emperor *Theodosius II.* had banish'd St. *Cyrisostom*, *A. D. 404.* the People flock'd together about the Palace, so that the Emperor, to pacify them, was forced to recall him from his Banishment.

And when St. *Ambrose* was banish'd by *Valentinian*, at the Instigation of his Mother *Justina*, the People did resist all such as came to carry him away: And such was their Zeal for the Truth, and Love to their injur'd Bishop, that they chose rather to lose their Lives, than suffer their Pastor to be taken away by the Soldiers, that were sent to drag him out of the Church. I could give you more Instances of this kind, from these Primitive Times; but these may be sufficient to shew you, of how little account the Doctrine of Non-resistance was in those Times, after Christianity was once settled, and that the People supposed they had the Law on their side. Neither do I produce them as fit to be imitated in all like Cases, but only to let you see, that the Example of those Times you call Primitive, are no sufficient Argument of what was lawful, or unlawful to be done.

M. Since you yourself do allow all, or however, most of these Actions, to be unlawful, I think you might very well have spared the mentioning of them; since I grant, that about the end of the 4th Century, when these things happen'd, not only the common People, but also the Clergy began to grow very corrupt in their Manners: And therefore, I cannot much value any Precedents that you can bring in that time, to justify Resistance in Christians, unless you could have shewn me any before the time of *Constantine*, which I am sure you are not able to do, much less any Authority from any of the Primitive Fathers, which justifieth Resistance of the Supreme Powers upon any account whatsoever.

F. 'Tis a very hard matter to satisfy you by Quotations; for before the time of *Constantine*, it is evident the Christians were not only weak, dispersed and disarmed, but had also the Laws of the Empire against them. And I have already granted, That Self-defence against Persecution upon account of Religion, was unlawful; but when, in the time of *Constantine's* Son and Successor, the People having the Law on their side, stood upon their defence against those that would have taken away their Lives, as in the Examples I have brought of the Inhabitants of *Paphlagonia*, then the Instances come too late; and the Age is grown so corrupt, that they are no longer Primitive Christians, than they observe your Doctrines.

Doctrines. But as for exprefs Precepts, or Testimonies out of the Scriptures and Fathers, to justify Resistance, I think it is very needless to bring any; for the great Mr. *Hooker* shews us very well, that it is the Intent of the Scripture to deliver us all the *Credenda* and *Agenda*, necessary to Salvation; but in other Matters, within the Compass of our Reason, it is enough if we have evident Reason for them, *Scripturæ non contradicente*; and if the Scripture doth not forbid such Resistance for Self-defence, (as I hope I have now proved to be lawful) I do not value whether there be any exprefs Authority to be quoted out of the Fathers for it or not: For whatever the Scripture leaves free, I think the Fathers have no power to forbid.

M. I see it is to no purpose to argue longer with you from Primitive Examples or Testimonies: And therefore I come now to the last thing I propos'd; *H. P. O. c. 1.* which is to shew you, that the Doctrine of our Church of *England*, as it is contain'd in the 39 Articles, Canons, and Book of *Homilies*, is as expretly for Passive Obedience, and against all Resistance of the Supreme Powers, as the Primitive Church itself: And therefore I shall begin with the Infancy of the Reformation, under *Henry VIII.* for there I begin the Reformation of Religion in this Kingdom.

F. I pray, Sir, give me leave to interrupt you; for I must tell you, I will not be concluded by any thing that the King or Church, in those Times did publish concerning Matters of Faith or Practice; since, unless it were in that one Political, rather than Religious Article, concerning the Pope's Supremacy, the Church in all other Speculative and Practicall Doctrines, was as much infected with Popery as it was before: And therefore, if you will have me to be converted by your Authorities, I pray begin with the purer Times of *Edward VI.* and *Queen Elizabeth.*

M. I shall comply with your Desires, since you will have it so: And therefore I shall begin with the 39 Articles of the Church of *England*; where, in the 37th *H. P. O. c. 1.* Article, (as they were pass'd under *Queen Elizabeth, Anno 1562.*) you may find it runs thus: "*The Queen's Majesty hath the Chief Power in this Realm of England, and other her Dominions, unto whom the Chief Government of all the Estates of this Realm, whether they be Ecclesiastical or Civil, in all Causes doth appertain, and is not, nor ought to be subject to any foreign Jurisdiction.*"

It is true, this Doctrine is not limited to the particular Case of Subjects taking up Arms; but it seems to me by two necessary Consequences, to be deduced from it: First, Because if the Pope, who pretended by a Divine Right, had no Power over Kings, much less have the People any such Power, who pretend to an Inferior Right, as that of Compact. Secondly, Because the Article makes no Distinction, but excludes all other Power, as well as that of the Pope. And in truth, the Plea is the same on either side; the Pope says, as long as the Prince governs according to the Laws of God, and the Church, (of which he is the Interpreter) so long the Censures of the Church do not reach him: And say the People, as long as the Prince governs according to the Laws of the Land, (and of the Meaning of those Laws they themselves will be the Interpreters) so long are they bound to be obedient; but as soon as the King doth any thing that may contradict the Pope, then he is (deservedly, say the *Romanists*) excommunicated, deposed, and murdered; and when he usurps upon the Peoples Liberties, then he ought to be deposed by the People. The Arguments on either side are the same, and for the most part the Authorities.

F. I must confess, this is the first time that ever I knew any Man go about to prove *Passive Obedience* and *Non-resistance* out of the *Thirty Nine Articles*; and indeed I should have thought you might have deduced any thing else from these Articles, as well as that. But let us see, how what I have said in this Discourse can come within the Contents of this Article, which only says, that the King or Queen of *England* is Supreme Governor over all Persons, as also in all Causes, whether Ecclesiastical or Civil, and is not subject to any foreign Jurisdiction: From whence you raise this Argument, That if the Pope, who claims by a Divine Right, hath no Power over our Kings, much less have the People, who can pretend to no such Right as he does, but only that by Compact. Now pray tell me, whether this be conclusive. I assert, that the People have, by the Law of God and Nature, a Right to defend themselves against the Supreme Powers, in

case they are violently assaulted in their Lives, Liberties, or Estates. Now I would very vain have you prove to me, how *Resistance* for Self-defence doth subject a Prince to any Jurisdiction, either foreign or domestick; and whether the People can have no Right to resist such Violence, unless they have also an authoritative Power over them?

H. P. O. p.
3, 4

M. It is not worth while to dispute this any longer with you to so little purpose; and therefore I shall come to the Canons of the Church, and in particular, those of the Year 1640, which I look upon as a full Explanation of the Belief of our Church in this Point, where you may see, in the first Canon, these two plain Propositions, among others.

Bp. Sparrow's
Collection of
Canons, &c.
P. 347.

First, "That the most Sacred Order of Kings is of Divine Right, being the Ordinance of God himself, founded in the prime Laws of Nature, and clearly established by expresse Texts both of the Old and New Testaments.

Secondly, "For Subjects to bear Arms against their Kings, offensive or defensive, upon any pretence whatsoever, is at least to resist the Powers which are ordained of God: And tho' they do not invade, but only resist, St. Paul tells them plainly, *they shall receive to themselves Damnation.*

From which you may plainly see, that this Convocation, which consisted of as great Men as, I think, had been for divers Ages, do clearly maintain Monarchy to be of Divine Right, and Resistance to be in no Case lawful.

F. I should grant the Canons of this Convocation to be a good Proof of the Judgment of the Church of *England*, were it not for two very good Reasons I have against them: The one I will tell you presently, and the other I will keep a while to myself. In the first place therefore, I suppose you cannot but very well know, that this Convocation sate and passed these Canons, which likewise receiv'd the King's Confirmation, after the Parliament (that was summoned together with this Convocation) was dissolved: And the Writs by which they sate being to the same purpose, I suppose you know, that by the Law of *England* the Convocation having been look'd upon as an Appendix to the Parliament, was till then always dissolved with it. For which reason all Acts and Proceedings of this Convocation were condemned, and declared null and void by the Long Parliament, that began to sit the latter End of the same Year: And which is more, was likewise condemned by the first Parliament after the Restoration of King *Charles* the second. And therefore, I think, I have very little Reason to own these Canons as conclusive.

Vid. Rush.
Collect. part
2. vol. 2. f.
1365.

H. P. O. ch.
2.

M. In the first place, I might reply to what you have now said, that that very Parliament, which first condemned these Canons, afterwards ruined the Monarchy itself. In the next place, that in old time the General or Provincial Synods were not dependant upon the Assembly of the Estates at the same time. And I likewise farther answer, that these Canons were made and confirmed in a full Convocation of both Provinces of *Canterbury* and *York*; and the making of Canons being a Work properly Ecclesiastical, these Canons were made by the Representatives of the whole Clergy of this Kingdom. 2. The Canons were confirmed by the King (which was all that was of old required in such Cases) and tho' the Convocation sate after the Dissolution of the Parliament, yet this is not without precedent, even in the happy Days of Queen *Elizabeth*, not to look back unto *Henry VIII.* or the Primitive Times. And as for your Objection, that these Canons were reprobated since the Restitution of *Charles II.* I say, that I quote them not as Law; but as the known Sense of the Church of *England* at that time.

F. Your first Answer in behalf of these Canons is altogether invidious: For it was not this Parliament that ruined the Monarchy, but only the Rump or Fag-end of it, after it had suffered divers Violences and Exclusions of Members by the Army, and that the House of Lords (being by this *Junto* voted useless and dangerous) were shut out of doors. Nor is your second Answer any more true; for antiently, in the Saxons Time, the *Witena Gemot* or Great Council, and the General Synod, made one and the same Assembly, consisting both of Clergy-men and Laymen; and then all Matters of Ecclesiastical Discipline were enacted and confirmed by the King, as also the Spiritual as well as Temporal States. Nor can you shew me an Example of any General or Provincial Synod, which met independently, and without the States of the Realm, until after the Reign of *Henry I.* when the Popes took upon them to encroach upon the Royal Authority, as also upon our Civil Rights, and by his Legates to call Synods, and make Ecclesiastical

cal Constitutions, in which neither the King nor the States of the Kingdom had any thing to do. And tho', I grant, that upon the *Reformation* the King was restor'd to those Rights, as Supreme Governor of the Church, which the Pope had before usurped ; yet is not this Act of the *Supremacy* to be so understood, as to give the King all that Power, which the Pope unjustly took upon him to execute before ; for that had been to make the Case little better than it was before : And therefore this Act of the *Supremacy* being only an Act of Restorance of the King to his pristine Rights, (of which that of calling Synods and Convocations was one of the principal) the King could not call nor continue those Assemblies in any other Form, or after any other manner, than they were held before the Pope's Usurpation, in taking upon him to call such independant Synods : And notwithstanding what you tell me, I am confident you cannot shew me any Precedent of a Convocation so turned into a Synod, as this was, in all the Reigns of *Henry VIII.* and Queen *Elizabeth.*

But as for your last Reply, that you quote not these *Canons* for a Law that obliges by a Civil Sanction, but as the Sense of the Church of *England* at that time ; if they do not now oblige the Church neither in point of Belief nor Practice, as you seem to grant, it signifieth no more to me what was the Sense of the greatest part of the Members of that Convocation in this matter, nor doth it any more shew me what is the true Doctrine of the Church of *England*, than if I should tell you, that because in the Reign of Queen *Elizabeth* the major part of the Bishops and Clergy of our Church were rigid *Calvinists* in the Interpretation of that Article about *Predestination*, that therefore *Calvinism* was then the Doctrine of the Church of *England*, but is not so now. And therefore we ought not to take that for a Doctrine of any National Church, unless the Synod or Assembly, that declares such Doctrine, be solemnly and lawfully assembled, according to the Laws and Customs of that Nation or Country wherein they are so declared.

M. Since you so much contest the Authority of these *Canons*, I shall no longer *H. P. O. p. 8, 9.* insist upon them, but I shall here shew you out of the Books of *Homilies*, to which all the Clergy in *England* are bound to subscribe by Act of Parliament (as well as to the Articles and *Canons*) as containing wholesome Doctrine, and nothing contrary to the Word of God (so that these *Homilies* do indeed thereby become a part of the known Laws of the Land) that in these very *Homilies* there are divers Passages so very full and plain against all Resistance of the Sovereign Powers for any Cause whatsoever, that if you are a true Church of *England* Man, as I hope you are, you can have no just Reason to deny their Authority.

The *Homily*, or Exhortation to Obedience, was made *An. 1547.* in the Reign of King *Edward* the sixth ; in the second Part of which Sermon of Obedience we are told in these Words (which I desire you to read along with me) :

" That it is the Calling of God's People to be patient, and on the suffering Side, and to render Obedience to Governors, altho' they be Wicked and Wrong-doers, and in no case to resist and stand against them. Subjects are bound to obey them (*i. e. Governor.*) as God's Ministers, altho' they be evil, not only for fear, but also for Conscience sake. And here, Good People, let us mark diligently, that it is not lawful for Inferiors and Subjects in any Case to resist and stand against the Superior Powers ; for *St. Paul's* Words are plain, that *who so withstandeth shall get to themselves Damnation.* Our Saviour Christ, and his Apostles, received many and divers Injuries of the unfaithful and wicked Men in Authority ; yet we never read that they, or any of them, caused any Sedition, or Rebellion against Authority. We read often, that they patiently suffered all Troubles, Vexations, Slanders, Pangs, Pains, and Death itself, obediently, without Tumult or Resistance. Christ taught us plainly, that even the wicked Rulers have their Power and Authority from God ; and therefore it is not lawful for their Subjects to withstand them, altho' they abuse their Power. Let us believe undoubtedly (good Christian People) that we may not obey Kings, if they command us any thing contrary to God's Commandments : In such a case we ought to say as the Apostle, *We must rather obey God than Man.* But nevertheless, in that case we must not in any wise withstand violently, or rebel against Rulers, or make any Insurrection, Sedition, or Tumults, either by force of Arms or otherwise, against the Anointed of the Lord, or any of his appointed Officers ; but we must in such a case patiently suffer all Wrongs and

" Inju-

“ Injuries, referring the Judgment of our Cause only to God.” And see Part the Third of the same Homily : “ Ye have heard before of this Sermon of good Order and Obedience, manifestly proved both by Scriptures and Examples, That all Subjects are bound to obey their Magistrates, and for no cause to resist, or withstand, or rebel, or make any Sedition against them, yea altho’ they be wicked Men.”

I could find many more such Places in our Homilies, but I shall trouble you but with one other Passage out of the second Book of Homilies, compiled in the Reign of Queen *Elizabeth*, in which Book the Homily against *Wilful Rebellion* is full to this purpose.

“ In reading the Holy Scriptures we shall find in very many, and almost infinite Places, as well of the Old Testament as of the New, that Kings and Princes, as well the Evil as the Good, do reign by God’s Ordinance, and that Subjects are bound to obey them. The farther and farther any Earthly Prince doth swerve from the Example of the Heavenly Government, the greater Plague he is of God’s Wrath and Punishment, by God’s Justice, unto the Country and People over whom God for their Sins hath placed such a Prince and Government. What shall Subjects do then ? What a perillous thing were it to commit to Subjects the Judgment, which Prince is wise and godly, and his Government good, and which otherwise ? As tho’ the Foot must judge of the Head ; an Enterprize very heinous, and which must needs breed Rebellion ; and is not Rebellion the greatest of all Mischiefs ? A Rebel is worse than the worst Prince, and Rebellion worse than the worst Government of the worst Prince, that hitherto hath been. If we will have an evil Prince (when God shall send one) taken away, and a good one in his place, let us take away our Wickedness, which provoketh God to place such a one over us. Shall the Subjects both by their Wickedness provoke God for their deserved Punishment to give them an undiscreeit and evil Prince, and also rebel against him, and withal against God, who for the Punishment of their Sins did give them such a Prince ?” And this Doctrine is more strictly enforced in the second Part of that Homily, from the Example of King *David*, in his Carriage towards *Saul* ; from which it will appear, that they did not suppose *David* to have used so much as defensive Arms against him, as you may see by this Passage in it : “ That when for his most painful, true and faithful Service, King *Saul* yet rewarded him not only with great Unkindness, but also sought his Destruction and Death by all means possible, *David* was fain to save his Life, not by Rebellion or any Resistance, but by Flight, and hiding himself from the King’s sight.”

From all which Passages out of the *Homilies*, I think, we may draw these plain Conclusions : 1. That as well evil as good Governors are to be obeyed as God’s Ordinance. 2. That therefore they are not to be resisted for any cause, tho’ they abuse their Power never so tyrannically. 3. That the People are not to judge when the Prince thus abuses this Power, so as thereby to make any disturbance. 4. That not only offensive, but also defensive Arms, if made use of against him, are utterly unlawful, and also against God’s express Command.

F. I grant, these *Homilies* seem to be very strictly penned against all Resistance, and ought to be (like all Discourses of this nature) positive and general ; and perhaps if I were to preach a Sermon to the Common People on this Subject, it should be much to the same purpose ; and yet for all that I might not believe, that it was absolutely unlawful for a whole Nation to defend themselves, in case of such extream Violence or Oppression as I have already supposed : For when Preachers speak to Vulgar Auditors, they are not bound, like Casuists, to tell them all the reserved Cases in which they may be dispensed with in their Duty, lest they might use this Christian Liberty for a Cloak of Maliciousness (as the Apostle tells us.) Thus if a good Preacher makes a Sermon against *Stealing* or *Murder*, he may very justly tell the People (as the Authors of these *Homilies* do) that they ought not in any wise, or for any Cause, to commit *Theft* or *Murder* ; without telling them all those Cases of meer Necessity, in which it may be lawful to make use of the Goods of another, and also to commit *Homicide* ; as, when a Man is forced to take Victuals, tho’ without the Owner’s Consent, for meer Preservation of Life, or to kill a Thief, or any other Man that assaults him, to save his own Life. So tho’ the Authors of these Books of *Homilies* do say, that that we may

not

not in any wise, and for no cause, withstand violently, or resist, the Supreme Powers; but that we must suffer patiently all Wrongs and Injuries, referring the Judgment only to God: Yet since they have not particularly put the Case, as I have now done, *viz.* what is to be done in case a whole Nation or People are about to be destroyed, ruined or enslaved, and made Heathens or Papists, by the unjust, nay illegal Violence of the Supreme Powers; we may rationally suppose, that since they were good Men, and never intended to urge these things further than what the Scripture and Fathers have already done, that they never really intended, that a whole People or Nation, together with the Religion established, should be thus ruined and destroyed, rather than such *Resistance* should be made.

M. But pray tell me, can there be any thing more express against your Interpretation, or more plainly oblige us to a patient Suffering, without Resistance of of the cruellest and most intollerable Tyranny, than these words I last read. *The farther and farther any earthly Prince doth swerve from the Example of the heavenly Government, the greater Plague he is of God's Wrath and Punishment, by God's Justice, unto the Country and People, over whom God, for their Sins, hath placed such a Prince and Governor.* And by what there follows, you will see that tho' such a Prince be so great a Plague to them; yet they cannot without Sin judge such a Prince, or rebel against him, but must patiently wait God's leisure to remove him.

F. I confess this is the strictest Passage of any in the whole Book, yet doth not this expressly reach the Case here put; or if it had, do I think myself, or any Body else, obliged, because of one or two unwary Passages in this Homily, of which perhaps neither the Parliament nor Convocation closely considered the evil Consequence, or so much as knew they were there; things of this kind usually passing such great Assemblies by the Lump, as relying upon the Testimony of some leading Bishops or Clergy-men, without considering the Book of Homilies strictly, or reading over the whole. So that the Parliament might very well declare, that they contained sound Doctrine, and nothing contrary to the Word of God, without asserting the literal Truth of every particular Passage in them, much less, that all that is contained therein, is to be believed upon pain of Damnation; and therefore I must beg your pardon, if I cannot suppose that all Resistance whatsoever, though in the most necessary Cases of Self-defence which I have now put, is absolutely unlawful and rebellious; or that the Fathers of our Church ever intended to lay so hard a Yoak upon the Neck of this Nation, which neither they nor their Fathers were ever able to bear; much less, that there is thereby taken away from this Nation, defending those fundamental Rights and Priviledges, which are essential to the Nature of the Government, and which, as it distinguisheth it from a Despotick Monarchy, so it doth the Subjects likewise from those of other Nations: For if the Scriptures themselves were never intended to alter Civil Constitutions much less certainly can either our Canons or Homilies do it. And therefore to deal freely with you, if the Canons and Homilies had been never so express on your side; yet, as long as no such Consequence can be drawn from the Holy Scriptures, I should not much value what they say, unless you can prove the Church of *England* to be infallible. And for this I have the sixteenth and twentieth Article of the Church of *England* (made in the Year 1562.) to bear me out. The former of which, concerning the Sufficiency of the Holy Scriptures for Salvation, runs thus: *The Holy Scripture contains all things necessary to Salvation: So that whatsoever is not read therein, nor may be proved thereby, is not to be required of any Man, that it should be believed as an Article of Faith, or be thought necessary or requisite to Salvation.* Therefore if I have plainly proved, by sufficient Authority, that your Doctrines of Passive Obedience and Non-resistance are not expressly found in Scripture, nor by necessary consequence may be rationally deduced from thence, they cannot be required of any Man to be believed or practised as necessary to Salvation. And therefore, if either this Church, or any other, imposes such a burden upon me, I am not obliged to bear it: And this the latter of these Articles of the *Authority of the Church* expressly asserts in these Words: *It is not lawful for the Church to ordain any thing contrary to God's Word written, &c.* After which it follows thus: *So that besides the same, it ought not to enforce any thing to be believed for necessity of Salvation.* Where note, that by *besides the same*, is to be understood any thing that is not found there-may be proved thereby by necessary Consequence, as was said before; and if the whole Church itself cannot do this, certainly no particular Church can.

And

Vid. 2d.
Vol. of Homi-
lies, 1st, 2^d
and 3^d Part
of the Ser-
mons against
Idolatry, espe-
cially the last,
p. 156, 162,
163.

And that divers of the most eminent Divines of our Church have used the same freedom with several other Doctrines contained in these Homilies, may appear from Dr. *Hammond's*, Dr. *Heylin's*, and Dr. *Taylor's*, with several other eminent Writers expressly denying, that the Church of *Rome* is guilty of Idolatry, or that the Pope is Antichrist; tho' both these Doctrines are as plainly laid down in the Homilies, as the Doctrine of Non-resistance: And yet none of these Men are ever taxed by those of the Church of *England*, for quitting her antient Orthodox Doctrines. And I desire you to give me a good Reason (if you can) why it is more lawful and excusable to part with the former of these Doctrines than the latter?

The like I may say also for the Doctrine of Predestination; which tho' expressly asserted in the 36 Articles of the Church of *England*, as interpreted by all the Bishops and Writers in the Reign of Queen *Elizabeth* and King *James*, as also the Bishops and Divines sent as Delegates from our Church to the Synod of *Dort*, who joined in the Interpretation of that Article, in the strict Calvinistical sense, you find, in all the Determinations of that Synod against the Doctrines of the *Arminians*, which then began to prevail; yet since the time that Archbishop *Laud* had the nominating of what Persons he thought fit to be made Bishops, Deans, &c. not one in ten of them but have been *Arminians* in all those Points, wherein they wholly differ from the Doctrine of *Calvin*, which is but the same with that of our 36 Articles so interpreted; yet none of the Divines of our present Church, who hold these Opinions, are branded with Apostacy from its antient Doctrine; but if any well meaning Divine, out of love to his Country, and to prevent Popery and Slavery from breaking in upon us, have but preach'd or publish'd any thing in derogation to these darling Doctrines of Passive Obedience and Non-resistance, he is strait branded with Apostacy from the Church, in quitting its main distinguishing Character; and we have lately seen degrading, nay the most cruel Whipping and Imprisonment, thought too little for such a Man. But one may say of some Men with truth enough,

Dat veniam Corvis, vexat censura Columbis.

M. Methinks, Sir, it is a great Presumption in you, and those of your Party, to make yourselves the sole Interpreters of those Places of Scripture which so expressly forbid all Resistance of the Supreme Powers; and then, when you have wrested the Scriptures to your own Mind, to cry out, that you are not bound to believe these Christian Doctrines, because you suppose they are contrary to Men's humane Reason, and the too great Love they have to their own Concerns; which is but the same way of reasoning which the *Socinians* and *Arians* make use of against our Saviour's God-head, because their narrow Understanding cannot comprehend it: But besides all this, I could shew you out of the best Writers of the Reformed Religion, both in this and other Protestant Churches, who interpret these places of Scripture against all Resistance, in the same sense as our honest Homilies have done; but I find it grows late, and I have not time now to shew you them: or if I had, do I believe you would be much edified by them, since you make so slight of the Authority of our Homilies.

F. You are very much in the right of it, and indeed I do not desire you should put yourself that trouble, for the Papists themselves will not own any thing for a Doctrine of their Church, which is not expressly found in the Council of *Trent*, or the Catechism composed according to its Decrees, and therefore will not be concluded by the Sermons or Theological Treatises of any of the Divines of their own Church, as to any Thing or Matter in debate between us. And, I think, I that am a Protestant, may certainly claim a like Christian Liberty; especially, since I am very sensible upon what Account too many Men have carried these Doctrines of Passive Obedience and Non-resistance to so great a height as they have done of late Years: But since you tell me that so many learned Writers, both of this and other Protestant Churches, have been of your Mind; So I could also (if I had a mind to cap Quotations with you) produce a sufficient number of Places out of *Luther*, *Calvin*, *Zuinglius*, and other first Reformers, as also of our own Writers at home, who have in many places of their Works allowed Resistance for Self-defence, in case of intolerable Violence and Oppression, to be lawful; and of these I can give you a large Catalogue, whenever you please to command me.

But

But since they will convince you, as little as I suppose your Writers would do me, I shall forbear mentioning them any further.

M. I value not much what *Luther*, *Calvin*, or any other violent Men of that sort, may out of Passion or Inadvertency have written on this Matter; and yet I can shew you a Passage out of *Calvin's Institutions*, which expressly forbids Subjects or private Persons to take up Arms against the Supreme Powers, as you may see by his own Words in the fourth Book, cap. 20. *Neque enim si ultio Domini est effrenata Dominationis correctio, ideo protinus demandatam nobis arbitremur; quibus nullum aliud quam parendi & patiendi datum est mandatum. De privatis Hominibus semper loquor.* And tho' I grant some Divines of our Church have allowed Resistance in some Cases, where the People, by the Laws and Constitutions of their Country, might lawfully have made such a defence of their Liberties, yet have they denied it in all other Cases, and particularly in our own Government; which is sufficient to shew, that whatever your Thoughts may be of it, yet that they thought it absolutely unlawful for the Subjects of this Realm to take up Arms against the King, or who acted by his Authority, upon any Account whatsoever; and therefore I must needs tell you, that I look upon these Doctrines of Passive Obedience and Non-resistance, as the distinguishing Characters of the Church of *England* from all other Churches.

F. Tho' I do not much value the Opinion of Divines in matter of Politicks, since most of them that I have met with have been very unhappy, when they have undertaken to meddle with that Trade; yet I doubt not but I can shew you, that some learned Men of our Church have not thought all Resistance to be unlawful, in case the main and fundamental Constitutions of our Government shall happen to be assaulted, or ourselves, in respect of our Liberties and Estates, like to be reduced to absolute Vassalage and Slavery. And therefore, if your Divines will own Resistance, where, by the Constitutions of the Government, it is allowed to be lawful, I think I can also prove, that it is not only lawful, but necessary, in some Cases in our own, for the Preservation of the Original Constitution; and if this should prove so, I know not what your distinguishing Character of the Church of *England* will signify, unless you will make it necessary for particular Churches to have other distinguishing Characters than the Scripture requires, or the Constitution of the Government will allow of; and if so, I doubt the Church of *England* would get as little Credit by such distinguishing Characters, as the *Calvinist* Churches abroad do by making absolute Predestination one of the Terms of their Communion, the Scriptures (without their rigid Interpretation) teaching no such Doctrine. But as for your Quotation out of *Calvin*, it amounts to no more than what I have all along granted, *That single private Subjects ought never to take up Arms or resist those in Power*, but when the good of the whole Commonwealth requires it. And therefore he, in the same Book, places a Power of Resistance in subordinate popular Magistrates, whereby you may see he grants the Thing lawful, but will not leave the Power of judging only in the common People, or Mobile; and so far I confess he is in the right, tho' I grant those Magistrates are, in respect of the Monarch, as much subject as the People.

M. I shall be glad to know what Divines of our Church they are, who have granted Resistance of the Subjects of this Kingdom to be in any Case lawful; for if there are any such, I confess they are Authors unknown to me; nor do I know any, but one, who was seemingly in the Communion of the Church of *England*, who hath asserted this Doctrine in his Book of *Julian the Apostate*; but you see he was presently confuted by those learned Men of our own Church, who undertook him, and, I think, have so well performed it, that I cannot tell whether it hath been more for their Glory or his Disgrace.

But as for what you say against making Passive Obedience the distinguishing Character of our Church, I confess indeed, it is very bad for a Church to hold evil or indifferent distinguishing Doctrines; but it is as certain, that it is very convenient for a Church to have distinguishing Doctrines, provided they be good ones, unless a Church can be obliged to err for Company, and to avoid distinction, which will not very well agree with the Text, that *forbids us to follow a Multitude to do Evil*, nor with the Practice of the Primitive Christians, when the Orthodox were so few, in comparison, that had there not been some Names of Note among them, they would hardly have been reckoned a number. But it

agrees admirably well with the Principles of Popery, thus to avoid Distinction, which hath its Numbers to boast of, when nothing else is to be said.

But there is one Lord, one Faith, one Baptism; and St. *Paul* reproves the *Corinthians*, because one cry'd he was of *Paul*, and another of *Apollos*, a third of *Cephas*, and the fourth of *Christ*: And must not then those that held one Lord, one Faith, one Baptism, necessarily distinguish themselves from all that held more than one? And if some would say they were of *Paul*, and some of *Apollos*, and some of *Cephas*, might not others distinguish themselves from them, by saying they were of *Christ*?

But by this Doctrine, you pretend, we distinguish ourselves from all other Churches in the World, and so from the Catholick Church; and therefore you cannot comprehend, why any one should value a Doctrine so much on that score; but you may comprehend, if you please, that it was never pretended that this Doctrine is taught no where but in our Church; and, as I hope, I have proved that it was taught in the Primitive Church, and is taught in other Protestant Churches at this Day: But this is evident, by fatal Experience, that Passive Obedience is the distinguishing Character of the Church of *England* by Law established; whereby it is distinguished from the separate Congregations among us, both of *Fanatics* and *Papists*; and to justify this Distinction, we have the express Testimony of several of our Princes since the *Reformation*, and of the Laws themselves too, that are still in force; which abundantly shew how dangerous the Principles of other Persuasions are to the State, as well as to the Church: Yet if other Churches have not so well preserved this Doctrine in its Purity, as ours hath done, as we would not provoke them to a Comparison, so we have no reason to be ashamed of it. But that many among them have taught this Doctrine, might be proved from the Writings of many of the most learned and pious foreign Divines; and particularly from a Book of a *French* Protestant lately written, who in the midst of Persecutions writes in defence of Passive Obedience, when he at the same time suffered what we feared.

*Traité du
Pouvoir abso-
lu des Souv-
rains, &c.
Cologne,
1685.*

F. Tho', I confess, at a time when it was made criminal for any Man publicly to maintain, that it was lawful to resist, in case the King should go about to introduce Popery and arbitrary Government among us by Force; and that whosoever went about to assert the Lawfulness of such Resistance, was sure to meet (if not with Punishment) at least with loss of Preferment, and Disgrace; when the Doctrine of Passive Obedience ran so high both in the Press and Pulpits; it was no wonder if any of our Church, who consulted their own Safety, durst stem so violent a Current; and yet even in these Times, the learned Dr. *Falconer*, in his *Treatise of Christian Loyalty*, chap. 5. §. 2. doth, tho' cautiously, allow Resistance in such great Cases, as of a Prince's alienating his Kingdom, or of destroying his People in an hostile manner, to be lawful, if ever it should happen: But out of a needless fear, lest this Doctrine of Resistance may be made use of as a Pretence for Rebellion, will allow it can scarce seem possible ever to happen in a King, *Compos mentis*, towards his whole Dominions. But I think I have already proved the possibility of it, and why they may not do the same in an absolute Empire, where the Prince would make them Slaves and Beggars, by invading their Liberties and Properties, I can see no Reason, but think I have given very good ones for it.

But as for the other Person you mention, who did openly in Print oppose this Doctrine of Resistance, whether he, or his Opponent, had the better in this Dispute, I leave to the indifferent Readers, who, I believe, will acknowledge that the Author of that Treatise did not so much forfeit his Reputation, by asserting a Right of Defence, where the Religion and Liberty are established by Law, and became a part of the Civil Constitution, as his Opponent did by introducing an arbitrary imperial Power in this Nation, unknown to our Laws, whereby a few mercenary Red-coats, either of this, or a Foreign Nation, should have, by the King's Commission, an irresistible Power over the Lives, Liberties and Estates of all Protestants. But since he went about to make us all Slaves by his Imperial Law, I do not at all envy him so generous a Performance; and yet for all that, I had much rather have that Man's Reputation, whom he opposed, tho' with all his Suffering, than this Gentleman's, tho' attended with all his Learning and Preferments.

But

But as for what you say in Vindication of the Doctrine of Passive Obedience and Non-resistance in all Cases whatsoever, it signifies little, since it is grounded upon a wrong Supposition; for you still take that for granted which is the Question yet to be proved, that because the Primitive Christians were against Resistance, in case of Persecution, therefore this must needs extend to whole Nations and Commonwealths, in all States and Conditions whatsoever; which, whether you have well proved or not, I leave it to your own Conscience to judge; for my own part, I cannot say you have convinced me with what you have said on this Subject: So that if these Doctrines, as you have put them, are neither good in themselves, nor necessary to be believed or practised in all Cases, I doubt God may justly ask those who either practise or impose them on others, *Who hath required these things at your Hands?* And as for those Divines of foreign Churches, who, you say, have writ for these Doctrines as well as ours; as I know not who they are, nor in what manner they have defended them, so do I not much value their Opinion, since there are many more altogether as Learned and Pious as they, who have held the contrary. Nor are all Divines who maintain Passive Obedience and Non-resistance of your side, who write (which I also allow) that for particular private Subjects to resist Princes in revenge of private Injuries, and rebel against the Supreme Powers for not being of their own Religion; or to take upon them to call Princes to an Account, or pass Judgment upon them, or punish them for their Actions, is altogether wicked and unlawful: Yet doth it not therefore follow that they have maintain'd all Resistance to be unlawful, in any Case whatsoever; tho' perhaps, if you were to make use of their Authority, you would produce them of your own side.

To conclude, I own myself for Non-resistance, in that limited sense I have now given, as far as it extends to particular private Men; yet that this Rule doth not extend to the whole Civil Society or People; and therefore, altho' in my own private Capacity, I ought to submit to, and suffer the greatest Injustice, rather than resist and disturb Government; yet when the main Foundations thereof are once begun to be pulled up, as I am an *English-man*, I think I am more obliged, by all Ties both Sacred and Civil, to defend and maintain the Government or Constitution, of which I am a Member, than I am to obey the King's personal Commands; and that being the primary Obligation, ought to be discharged in the first place.

M. I shall no longer compare, whether the Divines that write for, or those that write against Resistance, are the wiser or more learned, since you yourself, it seems, at last, are feign to own a limited Non-resistance, which you will have extend to private Persons, but not to the whole Civil Society or People: But I think I may venture still to maintain, that the Supreme Power, where ever it is placed, must be Irresistible; and that a whole Civil Society or People, who are not invested with part of the Sovereignty, can have no more Right to resist than single Persons: For to say that whole Societies have a Power to resist, and that particular private Persons, as Members thereof, have it also, is such a diminution of Supreme Power, as can never be consistent with it; for all Inferiors, whether private Persons or whole Societies, can have no Power but what is derived from the Supreme; and therefore, if they have a Right to resist, even that must be derived from the Supreme Power, and so that Power must destroy itself.

But as for what you alledge in your Justification, that Resistance may be lawful, to avoid Subversion of the Government: To this I may reply, that if Subjects be no longer in subjection to the Supreme Powers, the Government is hereby destroyed; for what more manifest Subversion can there be than this, *That Subjects are now no longer in Subjection, nor Governors can be no longer able to govern?* So that this Argument tends only to prove, that Subjects may subvert the Government one way, rather than suffer the Sovereign Power to do it another. So that upon the whole Matter, if the Government must be subverted, you would have no Body have the doing of it but yourselves.

F. However false your Premises are, and however weak the Proofs that you have brought for them, yet I see you are resolv'd to stick close to your Conclusion, (*i.e.*) that all Supreme Powers are absolutely irresistible. In which Dispute, whether you or I have been in the wrong, I dare appeal to any indifferent Judge; for I think I have sufficiently made out, that Resistance by the whole People, or

major part of it, against a general and intolerable Tyranny, is no diminution of Supreme Civil Power, nor inconsistent with it: Nor is your Reason for your Opinion any truer than the rest, that private Persons, whether taken single or in a whole Civil Society, can have no Power but what is derived from the Supreme, which is by no means so; for every private Man of the Society then acts by a Power precedent to it, *viz.* the natural Power of Self-preservation or Defence, which no Man ever absolutely gave up, neither for himself nor his Children, when he became a Member of that Commonwealth, tho' he was obliged, for the Peace of the Government or Civil Society, to suspend that Right in order to a greater Good, which once failing, upon the Dissolution of the Government, every Man's original Right takes place.

As for what you say against my Notion, that Resistance is lawful, when it may prevent the Subversion of the Government, your Reply to this is really equivocal, and consists in that false or wrong Notion you have of the nature of our *English* Government, which you suppose only consists in the Preservation of the King's Personal Power, without any respect to the Laws or fundamental Constitutions of the Kingdom; and that as long as the People are in Subjection, whether to legal Government or illegal Force, it is all one, the Government is still preserved; which is a great mistake: For the King receiving his Power from the Law, and having no Authority but what that gives him, when he overthrows the fundamental Constitutions of the Kingdom, he doth himself destroy the Government. And therefore, when in that Case the People do resist, it is either to maintain it, or else to restore it to the State that it was in before; so that it is not the People, in this Case, who have subverted it, but the King himself.

M. It now grows late, and it is high time to give over; but if you please to give me another Meeting, I doubt not but to shew you, that by the Original Constitution of this Government, the King not only hath the sole Supreme Power, but that by several Acts of Parliament all Resistance of the King, or those commissioned by him, is absolutely against the Laws and fundamental Constitutions of this Kingdom; and that they are all, by our Laws, Rebels, that dare presume to make any such unlawful Resistance: And I desire that you would give me a patient hearing in this Matter, because I have so great a kindness for you, that I would not have you lie under so dangerous an Error, which may happen to prove fatal to your Happiness, not only in the World to come, but also to the Safety of yourself and Family in this Life, if you should offer to put in practice what you have here maintained.

F. Sir, I give you many thanks for your kind Intentions towards me, since I do believe it proceeds from that real Friendship you have for me; tho' as for the former of those Judgments you mention, I hope I shall have no reason to be afraid, of it, for any thing I can yet see from those Arguments you have hitherto urged: But as for what may happen to me in this Life, I hope I have as little reason to fear it, since I believe this great Revolution will not only justify, but for the future defend those Arms that have been taken up for the restoring the true antient Government of the Kingdom.

M. I confess, Sir, that you have now too much the advantage of me, during these Times of Anarchy and Confusion; but yet I hope one Day to see this unhappy Nation again recovered from this sad Apostacy, into which, I confess, too many have lapsed; and then I doubt not but these Primitive and Loyal Doctrines of Passive Obedience and Non-resistance will be again restored to their former Integrity and Vigour.

F. Well, Sir, all I can say to you is, that I see you are not only in love with Slavery, but also with those that would bring it in upon us; yet however, I think I may give you this good Advice, that if you are not pleased with what hath been already done, since you have had no hand in the doing of it, you would be contented quietly to sit still and enjoy those Benefits that may thereby accrue to the whole Church and Nation; since I thereby expect a firmer Settlement of the Protestant Religion, as also of our Civil Liberties, than we ever yet enjoyed.

M. I thank you for your Advice, and you know, as my Humor is not to be troublesome or clamorous against that which is not in my Power to help; so on the other side, I heartily wish that the Prince may now agree with his Majesty upon such Terms as may prove for the good of the Church and Security of the State. But pray tell me when I may be so happy as to see you here again, that we may fully resolve this last Question?

F. To Morrow I shall be engaged, but the Day after being one of the *Christmas* Holy-days, I shall not fail to wait on you at the same Hour, and am very well pleased to wait on you here, since I foresee a great part of our next Conversation will depend upon Authorities out of Books, with which your Study is very well furnished, and my own are not in Town.

M. I shall expect your coming with impatience, and in the mean time I am your humble Servant.

F. Sir, I am yours.

V A U G U I





Bibliotheca Politica.

DIALOGUE V.

Whether the King be the sole Supreme Legislative Power of the Kingdom; and whether our Great Councils, or Parliaments, be a Fundamental Part of the Government, or else proceeded from the Favour and Concessions of former Kings.

M.  YOU are welcome, Sir; I pray sit down by the Fire. I was thinking before you came in, of the best Method of managing this *important Question*, whether by the Laws and Constitutions of this Kingdom, it can in any Case whatever be lawful to resist the King, or those that act by vertue of his Commissions. I shall therefore proceed in the next place, to the Proof of the second Proposition, in the Argument I at first propos'd; or, to speak logically, the Minor in the Syllogism, viz. That the King of *England* is the sole Supreme, or Sovereign Power in this Kingdom, and therefore is irresistible, and that not only as to his own Person, but also with respect to all such who act by his Orders or Commissions, though the things commanded be in themselves illegal.

F. I do not dislike your Method, though if you could never so plainly make out to me the Truth of this Minor Proposition, yet it will come too late to prove, that all Resistance of Supreme Powers is unlawful in all Cases whatever, since I think you have failed in the Proof of that your first Proposition. But since I do not deny the Truth of this second Proposition in some Sense, I pray be as short as you can in the Proof of it.

M. I shall observe your Desire; and shall briefly recite some Authorities, as well antient as modern, as also Acts of Parliament, which declare an absolute and Imperial Power to be solely in the King. To begin with the *Saxon Times*: First, as to the Title of King or Emperor used promiscuously; our King *Edgar* frequently in his Charters calls himself, *Albionis & Anglorum Basileus*, and the *Grecians* esteemed the Word *Basileus* to be of full as eminent a Signification, as Emperor: And King *Edward* the Confessor, in a Charter to the Abbey of *Peterburg*, styles himself *Rex Anglorum*, and his Government a Monarchy: And King *Ethelred*, in his Charter to *Canterbury*, styles himself *Angligenum, Orcadarum, necnon in Gyrojacentium Monarchia, & Anglorum Induperator*. So that you hereby may see, that the Kings of *England*, long before the Conquest, look'd upon themselves as

Emperors

J. E. M. G.
c. 17. p. 122.
& dein.

Cad. Vigorn.
& *Monast.*
Ang. part. 2.
p. 64.

Emperors, or absolute Civil Sovereigns. So likewise after that time we find *W. Rufus* dates his Charter to the Monastery of *Shafisbury*, *Secundo anno Imperii mei*: And though the Title of Emperor hath been disused, yet we shall find the Substance of it sufficiently challenged in that Letter of *W. Rufus* to Archbishop *Anselm*, telling him, *That he had all the Liberties in his Kingdom, which the Emperor challenged in the Empire*: And the like was challenged by *Henry the First* in all his Disputes with the Pope concerning the Investiture of Bishops and Abbots; and in all the Statutes of *Premunire* made by *Edward the Third*, the King's Sovereignty independent from the See of *Rome*, is expressly asserted: And the Statute of the 16th of *Richard the Second* declares; *That the Crown of England hath ever been so free, that it is under no earthly Subjection; but immediately subject to God in all things, touching the Regality of the Crown, and to no other*. And the Statutes of the 24th and 25th of *Henry the Eighth* set forth, *That this Realm of England is an Empire governed by one Supreme Head and King, and the Crown or Royal Authority is also thereby declared Imperial*; and the Kings of England are therein stiled Kings or Emperors of this Realm. So that I think, no Man needs to doubt where the Supreme or Sovereign Power of this Kingdom resides.

F. I will not deny any of those Authorities you have now made use of: Yet Titles alone are no Proofs of Power; for it is very well known, that the German Emperor, notwithstanding that great Title, is not therefore unaccountable or irresistible; since the College of the Princes Electors may depose him for Male-administration, or for violating any of the fundamental Constitutions of the Empire. And Mr. *Selden* hath very well observed, in his *Titles of Honour*, that this Supremacy, or Freedom from all Subjection, is not only challenged by our English Sovereigns; but also by the Kings of *Denmark*, *Sweden*, and *Poland*: The former of which yet was so far from being an absolute Monarch, that before the Reign of this King's Father he might have been deposed for Tyranny, or Misgovernment, by the Estates of the Kingdom, as the King of *Poland* may at this day. And therefore these Titles may indeed prove a Freedom from all foreign Jurisdiction; but do not prove that the King is endued with an absolute Sovereign Power within the Kingdom, as you may see in these Examples I have now given you.

M. If you are not satisfied with these Proofs, I doubt not but to give you other Authorities, both out of antient and modern Lawyers, as also Acts of Parliament, which sufficiently declare where the Supreme or Sovereign Power resides. In the first place, I suppose you will not deny, but that it hath been the Prerogative of the Kings of *England*, time out of Mind, to coin Money, dispose of all Offices, and create new Dignities, as he should think fit; as also to make War and Peace, to make Laws; and in short, to do all things whatsoever that are essential to a Monarch. And that he alone is the sole sovereign Power in this Kingdom, exclusive of all others, our antient Lawyers, *Glanvil* and *Fortescue*, plainly declare; the former of which says thus: *Rex nullum habere potest parem, multo minus superiorem*. The same thing is also repeated by *Braeton*, and a very good Reason given for it, in these Words: *Omnis quidem sub Eo, & ipse sub nullo, nisi tantum sub Deo, parem non habet in regno suo, quia sic amitteret preceptum, cum par in parem non habet imperium: Item nec multo fortius superiorem nec potentiorum habere debet, quia sic esset inferior sibi subjectis, & inferiores pares esse non possunt potentioribus*.

F. But pray read what immediately follows: *Ipse autem Rex non debet esse sub Homine, sed sub Deo & sub Lege, quia Lex facit Regem; attribuat igitur Rex Legi quod Lex attribuit ei, viz. dominationem & potestatem: non est enim Rex ubi dominatur Voluntas, & non Lex*. And though, I grant, the King is subject or inferior to no particular private Man; yet that he hath a Superior or Master within the Kingdom, besides God and the Law (and so is not the sole Supreme Power) appears by a Passage out of the same Author, in the second Book: *Rex habet superiorem Deum, item Legem, per quam factus est Rex; item Curiam suam, viz. Comites & Barones, quia Comites dicuntur quasi Socii Regis, & qui habet Socium habet Magistrum: & ideo si Rex fuerit sine fratre, i. e. Lege, debent ei fratre ponere*. From which Words it seems apparent to me, that this Author thought the King was not only inferior to the Law, but also to his Court of Parliament, called here *Curia Baronum*, who might bridle or restrain him, if he transgress'd the Laws, which are here called the King's Bridle. Nor can I conceive how this could be done, without some kind of Force or Constraint, if he refuse to receive this Bridle they would lay upon him.

M. I do not desire at this time to enter upon this Question, concerning that Power, which I know some Parliaments have pretended to, of *curbing* and *resisting* the King by force, if they supposed he invaded the fundamental Rights and Liberties (as they call them) of the Nation; and that for two Reasons: First, because it is not pertinent to our present purpose, of proving that the King is not the sole Supreme Power: As also because you very well know, that both Houses did, in 13 Car. 2. by an Act of Parliament concerning the *Militia*, solemnly renounce all *coercive* Power over the King, or any Right in either, or both of the Two Houses, of making Offensive or Defensive War against him. But if you have a mind hereafter to discourse further on this Subject, I doubt not but to prove to you from divers other Passages out of *Bracton*, and that old Treatise called *Fleta*, that it was no *Political Superiority* in the *Curia Baronum*, but only a *directive* Power, or moral Superiority, which they had of advertizing the King of any arbitrary Proceeding or Injustice he should happen to do; and by Complaint, Admonition, and Entreating, to impose upon him to amend the same, according to his Oath; but not by Coaction or Constraint. And in this sense they may be said (in a moral way) to put the Bridle of the Law upon him, which may be called *Civil Resistance*; but as for *Military Resistance* against an unjust King, it is as inconsistent with our *English* Government, as with any other Monarchy in the World.

H. D. L. p.
41.

But you very much mistake, if you suppose that the King of *England* is not Supreme, because he is *limited by Laws*; which really is no Objection, because a Sovereign, without any Diminution to his Sovereignty, may be limited in the Exercise of his Sovereign Power, either by his own Acts or Condescensions, or else by those of his Predecessors, under whom he claims. This is so certain, that there is no Supreme Power in Heaven or in Earth, which is not limited and confined in the Exercise thereof. Thus the Omnipotent Power of God himself is limited by his own Wisdom, Goodness and Justice, which are himself. So likewise the Powers of all Absolute Unlimited Monarchs are only so comparatively, with respect to positive Laws; but as for the Laws of God and Nature, which bind their Consciences as firmly as any Civil Laws, they are bound to observe them, and exercise their Sovereign Power within those Limits which they set and prescribe. For whether they have their Supreme Power from God, as we say, or from the People, as you alledge, it is all one as to this matter; for they can have no Right, neither from God nor the People, to make unjust and tyrannical Laws. And this Political Limitation of their Power, in the Exercise of it, doth no more destroy the Essence thereof, than its flowing in Pipes or Channels destroys the Essence of a Spring; since it is still the same, whether it runs confined through Pipes, or flows free and unconfined through the open Field. The Application is obvious.

Ibid. p. 29.

But as for the precedent Words in this Place of *Bracton*, which seem to intimate, that the King owes his Authority to Law; he there only means the King in opposition or contradiction to a *Tyrant*, who makes his Will his Law, according to that of Chancellor *Fortescue*: *Rex est ubi bene regit, Tyrannus, dum populum sibi creditum violenta opprimit dominatione; quod hoc sanxit Lex humana, quod Leges ligant suum latorem.* Where you may observe, that this Author makes a King's governing well, *i. e.* according to Law, a Mark of Distinction from a Tyrant, who oppresses his Subjects by a violent Domineering over them. And though he here supposes the King to be obliged by the Laws, yet that this Obligation is only Moral, appears by what immediately follows, when he says, *the Laws do oblige their Legislator.* Now if the King be the sole Legislator, (as he here seems to intimate) he must also be the sole Supreme Power; and if so, cannot be accountable to, or under the Coercion of any Superior Power; for then he would not be Supreme, as you your self have granted long since.

F. Since you are not willing to enter upon that antient Power, which you cannot deny but the *Great Council* formerly had, of putting a Bridle upon the King, and restraining his Actions, in case he invaded the Rights or Liberties of the People; I shall not insist farther upon it now, for the Reasons you have given; only I must make bold to tell you thus much, that if they have not a Power of defending their just Rights, if forcibly invaded by the King, it would be all one as if they had none at all. Tho' I grant, that what you have said concerning the Limitation of the Exercise of Sovereign Power, that it doth not derogate from the Absoluteness of the Power itself, is very true in all such Limitations which proceed from the

the intrinsick Nature and Perfection of the Being in which it resides ; as in your Example of God's infinite Power, being limited by his other Attributes. So likewise all humane Power (I own) are limited by the Revealed Laws of God, or those of Nature : But as to positive Laws you yourself assert, that absolute Monarchs are only obliged by them as long as they please ; and consequently, that they may alter them, or derogate from them, as oft as they think good ; as the *Roman* Emperors could revoke any Privileges or Immunities they had formerly granted to particular Persons, Cities, nay to Tributary Kings, or Commonwealths ; and all this very justly, because as all such Grants were made only for the publick Good of the Empire, so they being the sole Judges thereof, when ever they found such Concessions to prove prejudicial to it, they might justly alter or revoke them. Now if the Power of our Kings be as absolutely Sovereign as that of the *Roman* Emperors ; and only limited by their own free Grants or Condescensions to the People, and not from any Power *ab extra* ; such Grants or Condescensions, though never so solemnly past into Laws in the Parliament, or Assembly of the States, are still no more than positive Laws : And then if the King is the sole Sovereign Power (unlimited by any thing *ab extra*) how he can so tie up his own Hands, as that he may not break or rescind all those Concessions he had made ; and those Limitations which he had put upon himself, if he think or declare it is for the better benefit of the Commonwealth so to do ; I cannot comprehend, if he be, by the Original Constitution, the sole Law-maker and Judge of what is for the publick Good : Much less can I understand how he can oblige his Successors (who must still be supposed as absolute Monarchs as himself) to observe them. And therefore if all our Civil Rights and Liberties, were no other than what you would have them (the *free Condescensions* or *Self-Limitations* of Sovereign Power) I desire you would shew me what Security we can have for the Enjoyments of them longer than the King pleases : For it seems plain to me, that whenever he shall fancy the Liberties and Properties of the Subjects (both which you suppose were derived from him) to be injurious to, or inconsistent with his Prerogative, or Sovereign Power, he may lawfully disannul or revoke them : And in what Case we then should be (considering how things had like to have gone lately) I leave any indifferent Man to judge.

Nor is your Interpretation of *Bracton's* Words, *Lex facit Regem, &c.* any more than an absolute wresting of them from their true Meaning, which is not (as you would have it) to distinguish a King that governs by Law, from a Tyrant that makes his Will his Law : For every absolute Monarch that doth so is not a Tyrant, provided he direct his Actions according to the Laws of God and Nature, as you yourself assert ; and a Prince may as well govern thus as the great *Turk*, *Czar of Muscovy*, and all the Eastern Monarchs do at this Day, who are not counted Tyrants in so doing : But certainly you will say, that he would make a very scurvy *English* King, who would observe no other Rule. Nor do you less wrest *Fortescue's* Words, when you render them, *Rex est ubi bene regit, Tyrannus, &c.* Supposing the meaning of it to be, that this Author makes a King's governing (that is, say you) according to Law, the only thing to distinguish him from a Tyrant, &c. Whereas he says no such matter ; but only *Rex est, ubi bene regit*, which he may do without any set Laws, as well as with them ; as the first Kings you suppose did before they were limited by Laws.

But as for *Fortescue's* supposing the King to be the *sole Legislator*, that Word *sole* is of your own addition ; for if he had said so, he would have contradicted himself, as I shall shew you presently. It is true, the King hath a great share in the Legislative ; yet hath he two other Bodies to join with him by a concurrent or co-operative Power in it ; and I think I have all the antient Lawyers of *England* on my side. To begin therefore with *Ranulph de Glanville*, who was Chief Justiciary in the Reign of *Henry the Second* : He gives us, in his Prologue to his Treatise of the Laws of *England*, this Testimony : *Leges namque Anglicanas, licet non scriptas, Leges appellari non videtur absurdum (cum hoc ipsum Lex sit, quod Principi placet, & Legis habet vigorem) eas scilicet, quae, super dubiis in consilio definiendis, Procerum quidem consilio, & Principis accedente autoritate, constat esse promulgatas.* So likewise *Bracton*, in his very first Chapter, speaks much to the same purpose : *Cum Legis vigorem habeat, quicquid de consilio & de consensu Magnatum, & Republicæ communi sponcione, au-*

thoritate Principis precedente, juxta fuerit definitum & approbatum. And also in his third Book, Chap. 2. when he speaks of the antient manner of making Laws in England, he says: *Quæ quidem fuerint approbata consensu Uentium, & sacramento Regum confirmata, non possunt mutari nec destrui sine communi consensu Uentium, & consilio eorum, quorum consilio & consensu fuerint promulgata.* Where you may see these antient Authors plainly declare, that nothing hath the force of a Law in this Kingdom, but what is approved of and consented to by all Orders of Men, either by themselves or their Representatives: And, which is very remarkable, *Bracton* supposes the King's Authority, or Royal Sanction of a Law, may precede the Consent of the Great Council; which quite destroys that Notion, that it is the King's giving his last Assent, which gives it the Essence and Vigour of a Law.

And with these more antient Sages of the Law *Fortescue* also agrees in his 9th Chapter *De Laudibus Legum Angliæ*, where he says: *Rex Angliæ populum gubernat, non mera potestate regia, sed politica: populus etenim iis legibus gubernatur quas ipse fert, &c.* What follows is word for word the same with what *Bracton* had before in his first Chapter, and therefore needs not to be repeated: So likewise in the 18th Chapter, speaking of the *Absolute Legislative Power* of Kings in some other Kingdoms, he thus proceeds: *Sed non sic Angliæ statuta oriri possunt, dum nedom Principis voluntate, sed & totius regni assensu ipsa conduntur, quo Populi læsuram nequunt, vel non eorum commodum procurare.* But if they after prove inconvenient, he immediately adds: *Concito reformari ipsa possunt, sed non sine Communitatis & Procerum regni illius assensu, quali ipsa primitus emanarunt.* To which I may also add an Authority out of that Learned Author *St. German*, in his Dialogue called the *Doctor and Student*, written in Latin, in the 10th Chapter, entituled, *De sexto fundamento Legis Angliæ.* The Student thus speaks: *Sextum fundamentum Legis Angliæ stat in diversis Statutis per Dominum Regem, & Progenitores suos, & per Dominos Spirituales & Temporales, & per Communitatem totius regni in Parliamentis, editis; ubi Lex rationis, Lex divina, Consuetudines, Maxima sive alia fundamenta Legis Angliæ prius sufficere minime videbantur.* Where you see the *Legislative Power* is here attributed to the Lords and Commons jointly with the King. And therefore my Lord *Coke*, in his Notes upon the Statute of *Westminster*, l. calls it a *Compleat Parliament*, as consisting of all the Estates necessary thereunto: For, says he, *a Parliament making or enacting Laws consists of the King, the Lords Spiritual and Temporal, and Commons; and it is no Act of Parliament, unless it be made by the King, Lords and Commons.*

P. 3. a. b.

M. I shall not much concern my self with what your Common Lawyers, either antient or modern, have writ upon this matter; much less what Sir *Edward Coke*, a known Enemy to the King's Prerogative, doth maintain: Since I have as good or a better Authority than he, viz. that of the *Year-Book* of 22 Ed. 3. wherein it is expressly declared by divers Earls and Barons, and by all the Justices, in the Case of one *Headlow* and his Wife, who had a Suit with the King, *That the King makes the Laws by the Assent of the Lords and Commons, and not the Lords and Commons; and that he could have no Peer in his own Land, and that the King ought not to be judged by them.* So that it is, I think, evident, that the Laws are primarily and properly made by the King, and that the two Houses may have a co-operative, but no co-ordinate Power with him. And though at this Day I grant, that Custom hath made the Assent of the Lords and Commons necessary to the passing of all Laws, yet it is still the King's Word, or *le Roy le veule*, that makes them so: And I much doubt, whether even this were part of the antient Constitution of this Kingdom or not, or proceeded at first from the gracious Favour and Permission of former Kings, as I could shew by a Series of Councils in the *Saxon Times*, if it were not too tedious to mention them particularly; therefore I shall only select some of the most remarkable.

For though I confess, the *English Saxon Kings* performed all great and considerable things by the Counsel and Advice of their Bishops and Noblemen, comprehended under the general Names of *Wites*; yet you will find by the Titles of almost all the Councils in *Spelman*, *Lambard*, &c. that these Kings alone made their Laws, though by the Advice and Counsel of their *Witena Gemote*; which was then no other than the King's Greater Council, since he called what Great Men and Bishops he pleased to it, and omitted the rest: And it is never mentioned, that they were made by their Consent, as necessary thereunto. Nay, sometimes we find that some of the antient *Saxon Kings* made Laws without the Assent of their

Great

Great Council. Thus *Offa*, King of the *Mercians*, being at *Rome*, out of his Royal Munificence, gave to the Support of the People of his Kingdom, that should come thither, a Penny to be paid Yearly for ever out of every Family, whose Goods in the Fields exceeded the Value of Thirty Pence. And this he made a perpetual Constitution throughout all his Dominions, excepting the Lands conferred upon the Monastery of *St. Albans*. This Imposition and Law continued a long while in force, though we find it not confirmed by any *Great Councils* in the Time of his Successors; only in the Laws of King *Edgar* and King *Edward* it is enjoined to be paid as the King's *Alms*; which implies it was the King's Gift, and solely his, without the Consent of a *Great Council*. *Vid. Mon. P. 171.*

But to give you a more particular Proof of the Supreme and Absolute Power of our *Saxon* Kings, as well during the *Heptarchy* as afterwards, in making and establishing Laws; I shall begin with the first we have extant, which are those of *Ina*, King of the *West-Saxons*, who began his Reign *An. 712*. In the Preface to his Laws we find it thus express'd, which I shall render out of the *Saxons* Copy, published by Mr. *Lambard*: *I Ina, by or with God's Gift, King of the West-Saxons, with the Advice or Council of Cenred my Father, and Heddes my Bishop, and Ercenwold my Bishop, and with my Aldermen, and eldest Wites, or Wise Men of my Kingdom, do command, &c.* Then in the first Chapter the King speaks in the first Person Plural: *We bid or command, that all our People shall after hold fast or observe these Laws and Dooms.* From this Preface you may observe, 1. That Kings are the Gift of God, and that *God's Gift* signified the same with *Dei Gratia*; they are not the Creature of the People. 2. That Princes, for the better Government of their People, in the settling of Laws in Church and State, did then Consult, Deliberate, and Advise with their Bishops, Noblemen, and eminently Wise Men of their Kingdoms, whom for their Wisdom they honour'd with publick Employments in their Dominions. 3. That after such Consultation, Deliberation, and Advice, the Sovereign establisheth and makes the Laws. *Vid. Lam-bard. Archai-onom. in the Laws of K. Ina, p. 1.*

The next Instance I shall make use of, is out of the same Author, in the Laws of King *Alfred*, where, in the Conclusion of his Laws about Religion, and prefatory to the Secular Laws, he saith, *I Alfred, King, have gathered these (Sanctions) together, and caused them to be written*; and then recites, that those that he liked not, with the Council of his *Wites*, he had rejected; and those he liked, he bad or commanded to be holden. And we may observe, that the King here speaks in the single Person, that He himself collected or chose, and also rejected, what Laws he pleased. The next material Illustration where the Legislative Power then resided, may be found in the Laws of King *Edward* the Elder, where, after the Charge given to the Judges, the first Law begins, *I WILL*; and so in others. In the 4th it is thus expressed: *Edward the King, with his Wites, that were at Exeter, strictly enquiring by what means it might be better provided for Peace and Tranquility, &c.* In the 2d and 3d Chapter it is: *WE also Declare, Pronounce, or Sentence*: And in the 7th, *And I WILL*. In which Laws we have none mentioned with the King, but his *Wites*; and his Commanding, Willing, or Pronouncing in the Imperative Mood, is observable. *Ibid. 21.*

The next Laws I find are those of King *Athelstan*, which begin thus: *I Athelstan, King, with the Advice of Walfelm my High Bishop, and other my Bishops, commanded or bid all my Rieves (i. e. Prefects) of what Degree soever, to pay Tythes, &c.* And this he commanded his Bishops, his Aldermen, and *Præpositi* (who were the Judges in the Country Courts) to do the same. In these Laws, *We, Cwædon*, is used, which, I suppose, is something more than *Sommer* understands by his *Cuide*, a Saying, Speech, or Sentence, and properly is, *We will*. But the Absoluteness of the King appears most in the 26th Chapter, wherein it is expressed, *That if any of the Græves (i. e. Judges) do not perform these Commands, or be remiss in the Execution of those he hath enjoined, he shall be punished for his Excess of Contumacy, according to the Fines there set down.* *Ibid. p. 45. Sp. L. Council. P. 396.*

King *Edmund* is the next of our Kings, whose Laws are transferred to us, and the Proem tells us, that King *Edmund* assembled a *Great Synod* (or Council) to *London*, at the *Holy Easter Tide*: And the Persons summoned are stiled *Godskind* and *Worldskind*, i. e. Clergy and Laicks. After the first six Chapters of Laws, in the Proem to the second Part of them, *The King signifies to all Men, Old and Young, that he had ask'd Advice in the Assembly of his Wites, both Ecclesiasticks and Laicks*: And in

the Laws it is often said, *Thonne cwadon*, These we pronounce or appoint ; and sometimes the single Person is used ; and in other places, *Us betweonan beoldan*, It is holden betwixt us. Here we find the Great Council summoned by the King, and the constituent Parts of it to be the Clergy and Laity ; yet still we find the Legislative Power in the King alone.

Ibid. p. 444.
An. Ch. 967.
Ibid. p. 455. So likewise in the Title to King Edgar's Ecclesiastical Laws, it is thus : *The Laws which King Edgar, in a frequent Assembly or Council of the Servants of God, hath ordained.* Whereby you may see, that the Enacting Part relates wholly to himself. The same King Edgar, in his Charter to *Glastonbury Abby*, concludes it thus : *Hanc privilegii paginam Rex Edgarus, anno 12 regni sui, sacro scripto apud Londoniam communi Concilio optimatum suorum confirmavit.* So that though it appears this was in the Presence of a Great Council ; yet the Granting and Enacting Part proceeded wholly from Himself.

Concil. 552. The Preface to the Laws of King Canutus, in Sir Henry Spelman, runs thus : *These are the Worldly Constitutions, that I Will or Command, with my Wites Advice, that Men hold all over England.* In most of the Chapters it is said, *We teach, We bid, or command, We forbid* : And in the Conclusion, it is in the single Person of the King, *Now I command all, and bid every Man in God's Name.* And the Preface to the Latin Version of them saith, *Hæc sunt Instituta Cnudi Regis Anglorum, Dacorum, Norwegarum, venerando sapientum concilio ejus, ad laudem & gloriam Dei, & suam Regalitatem, &c.* Of this Canutus, William of Malmsbury saith, that he commanded to be observed for ever all the Laws of antient Kings, especially those made by King Ethelred his Predecessor, under the Penalty of the King's Fine, to the observing of which, he saith, that in his own time they were sworn to, under the Name of King Edward's Laws ; not that he had appointed them, but had observed them. So that I think, upon the whole matter, nothing is more plain, than that our English, Saxon, and Danish Kings, did not only call Councils, and preside in them, but that the Legislative Power was lodged solely in themselves.

Gest. Regum
lib. 2. c. 11.

F. I perceive the Authority of our ancient Lawyers is a little too hard for you to answer with your usual Distinctions ; and therefore you seemingly deny their Authority, though in effect you grant it, as I shall shew you by and by : But as for your Quotation out of the *Year-Book*, which you think sufficient to counterballance all the Authorities I have brought, I think I may much better question the Judgment of those that gave that Opinion, since I can shew you that you yourself cannot allow it in all Points for Law : For in the first place, it is not there said, that it was so judged by all the Lords and Judges who were appointed to hear the Cause there mentioned ; but only *Fuit dit, que le Roy, &c.* By which it seems to have been the private Opinion only of some one or more of the Lords or Judges there present : For it is not said, *fuit adjuge*. And if you will have it to have been the Opinion of them all, pray read what follows after : *Fuit dit quand temps le Roy Henry, & devant, le Roy fuit implede comme seroit autre homme de Peuple. Mes Edward Roy son fils ordeign que homme sueroit vers Roy per Peticion ; Mes unques Roys ne seront adjugez : Si non per eux mesmes & leur Justices.* So that if the former part of it be Law, the latter must be so too ; and then it will directly contradict what you have quoted before out of *Bracton* : That in the time of Henry III. (in which he liv'd) there lay no Remedy against the King, but only by Petition : Whereas this Opinion makes him, before the time of Edward I. to have been liable to the same legal Process with other Men. But notwithstanding, this Passage in the *Year-Book* may very well bear a legal Interpretation, only by supplying what is indeed to be understood after the Words, *non pas les Peers, & le Commune*, [viz. *Sans assent du Roy*] which as it was then true, so I hope it will ever be so.

Chap. 21.

But I think I can give you a much better Authority than this *Year-Book*, to prove where the Power of Making and Dispensing with Laws doth truly reside, viz. The Solemn Declaration of the King, Lords and Commons, in the 25th of H. 8. (a Prince as jealous of his Prerogative as any of his Predecessors) where in the Preamble, read these Words : " It standeth therefore with Natural Equity and good Reason, that in all and every such Humane Laws made within this Realm, or induced into this Realm by the said Sufferance, Consents and Custom, your Royal Majesty, and your Lords Spiritual and Temporal, and Commons, representing the whole State of your Realm, in this your High Court of Parliament, have full Power and Authority not only to dispense with those, " and

“ and all other Humane Laws of this your Realm, as the Quality of the Persons
“ and Matter shall require : Also the said Laws, and every of them, to abrogate,
“ annul, amplify and diminish, as it shall seem to your Majesty, and the Nobles
“ and Commons of your Realm, present in your Parliament, meet and conveni-
“ ent for the Wealth of your Realm, &c. ” Whereby you may plainly see, that
the Power of Making, Abrogating, and also Dispensing with Laws, is by this Act
ascribed jointly to the King, and the Two Houses of Parliament ; and not to the
King alone.

But though I do not affirm, that they have a Co-ordinate Power with the King
in making Laws, yet they have a Co-operative Power therein, as yourself have
granted ; for what is Co-operation, but a Power of working together ? and how
can three distinct Bodies work together, without each contribute their share to pro-
duce the intended Effect ?

M. Perhaps I may have been too unwary in my Expression : But pray answer
the Authorities I have brought from our ancient *English Saxon* Laws ; wherein it
seems plain to me, that the King had then the sole Legislative Power.

F. I grant, he had a chief Share in the Legislative Power ; but not the Sole
Power, that is, He could make no Laws but in the Great Council, and by their
Consent : And this you might have seen as well as I, if you had not slyly past by
what made against you ; and therefore, in the first place, to begin with your In-
stance of *Offa's* giving that Boon to the *Roman* School, I think the Authority you
bring for it is very slight : For though I own that *Matthew Paris*, who writes his
Life, relates this Donation to have been made at *Rome*, without mentioning any
Consent or Confirmation of his Great Council : Yet this seems but an imperfect
Account of the Matter ; and according to the usual Way of the Monkish Wri-
ters of those Times, who are not so exact in such Matters as they should be :
And therefore, though *Offa* did give, or vow these Pence at *Rome* ; yet the Gift
might receive its force from the Consent of his Great Council, after he came
home : Since all his Laws, and the Acts of his Councils are lost, unless it be one,
which *Sir H. Spelman* hath given us from such Remains as have been saved out of
the Libraries of several Monasteries at their Dissolution : And this contains no
less than the Consent and Confirmation of his Great Council assembled at *Calcuth*,
Anno 940. for the Foundation and Endowment of the Abby of *St. Albans*, as also
that of another Council at *Verulam*, for the conferring of divers other Lands of his
own to that Monastery. Now I leave it to any indifferent Man to judge, whether
that King who could not bestow his own Demesnes upon the Church, without the
Consent of the Common-Council of the Kingdom, could give away at once the
30th Penny of all his Subjects Estates for ever, without their Consents : I am sure
the Donation of the same sort of Pence by King *Edward the Confessor*, which is
now to be found among the Laws of King *William the First*, is said to be granted
Communi Concilio Regni, and that the *Saxon* Kings could not bestow their Lands
upon Religious Uses. See *Sir H. Spelman's* Councils, where *Baldred* King of *Kent* *Spel. Concil.*
is an evident Example ; who, though he had given the Manor of *Mallings* in *Vol. 1. p. 347.*
Suffex to *Christ-Church, Canterbury* ; yet because his *Principes*, or Great Men, that
is, his Great Council consented not thereto, it was revoked, until King *Egbert*,
and his Son *Ethelwulf* did afterwards renew the said Grant, with the Consent of *ib. p. 347.*
a Great Council held at *Kingston*, *An.* 840. as you may see in the same Volume,
last cited. And I am sure after the Heptarchy, when our Kings were more power-
ful, the same King *Ethelwulf* could not by his meer Prerogative grant the Tythes
of his Subjects Estates to the Clergy, without the Consent of a Great Council of
his Bishops and principal Men, held at *Winchester*, *An. Gratia* 855. and intituled
thus ; *Celebris illa donatio Ethelwulfi Regis decimæ mansionis & omnium bonorum per ter-* *Vid. Vol.*
ram suam Deo & Ecclesiæ factæ confirmatur. *p. 348.*

M. I grant, that perhaps these Kings could not dispose of their own Lands, or
the Estates of their Subjects, without the Consent of their Great Council, any
more than the Kings of *France* could formerly ; yet I hope they were absolute Mo-
narchs for all that.

F. I beg your Pardon if I have been somewhat long in answering your Example
of King *Offa* : But I will now shew you, that they could no more make Laws,
than dispose of their own, or their Subjects Estates, without their Consent ; and
which you yourself might easily have seen, if you had pleased to have consulted

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Ibid. tom. 1.
p. 219.

Vid. Chronic.
Brompt. Col.
848. lin. 54.

Flov. Wigorn.
A. D. 992.

Brompt. ut
sup. Col. 893,
894.

Ibid. Col. 895.

Sir Henry Spelman as diligently as you have done Mr. Lambard: For there you might have found, that about the Year 712 King Ina assembled a Great Council or Parliament, wherein he made Ecclesiastical Laws concerning Marriages, &c. and did other things, *ad concordiam publicam promovendam per commune Consilium, & Assensum Episcoporum, Principum, Procerum, Comitum, & omnium Sapientum Seniorum, & Populorum totius Regni.* So likewise, if you will please to look into the *Decem-Scrip-tores*, you will find how Althestan's Laws were made by the Title of them, which runs thus: *Hec sunt judicia quæ Sapientes Exonia Consilio Adelstani Regis instituerunt, & iterum apud Feuresham, & tertia vice apud Thundresfeldium, ubi hoc definitum simul & confirmatum est.* So also King Ethelred held at London a Great Council, and made Laws, *Consilio Jussuque Regis Anglorum Æthelredi, Procerumque suorum de tota Anglia, &c.* Look also into the Title of King Ethelred's Laws in Brompton's Chronicle, where you will read these Words; *Hoc est Concilium quod Ethelredus Rex & Sapientes sui condixerunt ad Emendationem & augmentum pacis omni populo apud Wodestocam in Mircena Landa, id est in terra Mircenorum, &c.* Where by Concilium, must be understood Law or Decree. To instance in one more out of the same Author still, from the Title to another Set of Laws made by the same King: *Hæ sunt Leges quas Ethelredus Rex & Sapientes sui constituerunt apud Venetyngum ad Emendationem pacis & felicitatis Incrementum.* See likewise in *Monasticon Anglicanum*, the 1st Volume, Anno Dom. 1024. *Canutus, Rex Angliæ cum Consilio & Decreto Archiepiscoporum, Episcoporum, & Primatum suorum expulit Clericos inhoneste viventes ab Ecclesia Sancti Edmundi, & Monachos in illa constituit.* And the same King Cnute bestowed divers Lands, and other Privileges, on the Monastery then call'd Briadvicefworth (afterwards St. Edmundsbury) *cum Consilio, & Decreto Archiepiscoporum, Episcoporum, Abbatum, Comitum aliorumque omnium Fidelium.* The like we find in a Charter of King Edward the Confessor; by which he granted divers Lands and Privileges to the Abby of Westminster; *Cum Consilio & Decreto Archiepiscoporum, Episcoporum, Comitum aliorumque Optimatum.*

From all which it manifestly appears, that under the *English Saxon* Kings the Legislative, or Enacting Power, was in the Council of the *Sapientes* or Wites, conjunctly with the King; and that none of these *Saxon* Kings could pass any Laws, or make any considerable Alteration in the State, without not only the Advice, but Consent of their Great Council; which then consisted of their Bishops, Great Lords, Principal Freeholders, and the Representatives of Cities and Towns, as I shall prove another time, and was not left to the King, *ad libitum*, to call-whom he pleased thereunto. And as the Word *Decretum* signifies Decree or Order; so likewise may the Word *Consilium* here signify something more than bare Advice, *viz. Agreement, or Appointment*; which if you please to peruse any ordinary Dictionary, you may presently satisfy yourself in.

Vid. Gold-
man's Dict.

But before I dismiss this Argument, I cannot but remark upon your Instance of King Edmund's making Laws alone, because he there speaks in the first Person plural; whereas if you will but consult the *Proem* to those Laws once again, you will, I doubt not, be satisfied of the contrary, for the Words are: *That having ask'd Advice of the Council or Assembly of Clergy and Laicks, that it seemed good to them all, as well as to the King, and therefore we thus ordain:* By which it appears, that the last Words, wherein the *Ordaining part* resides, refer as well to the whole Assembly, as to the King.

A. S. D. D.
p. 72. col.
8^o d. in.

M. The Government of our *English Saxon* Kings, is, I confess, very dark and obscure; though, according to our ancient Historians, they seem to have been very absolute; though when we come to look into the Laws themselves, I confess they seem rather to have been limited Kings, than absolute Monarchs; though whether that Limitation proceeded from the original Constitution of the Government, or their own free Consent and Concessions, is a very great Question; though I rather incline to the former, and shall give you my Reasons for it when we come to discourse on that Subject: But in the mean time, I must tell you in Reply to what you have said, that if we consider the Times not long after the Conquest, you will find the Supreme Legislative Power to have been then wholly in the King (as it is so still) notwithstanding some ambiguous Expressions to the contrary; or else our Kings would not be, what I think they really are, absolute Monarchs. But to descend to Times less obscure, it is certain, that when the *Norman Conqueror* first came in, as he won the Kingdom by the Sword, so did he

he govern it by his Sole Power : His Sword was then the Scepter, and his Will the Law : There was no need on his part of an Act of Parliament, much less of calling all the Estates together to know of them after what Form, and by what Laws they would be governed. It might as well be said of him, as in the flourishing and best Times of the *Roman Emperors* ; *Quod Principi placuit, legis habet Vigorem*, that whatsoever the King willed, did pass for Law. This King, and some of his Successors, being then Παύβαιλεις, and having a Despotical Power over the Lives and Fortunes of their Subjects, which they disposed of for the Benefit of their Friends and Followers, *Normans, French and Flemmings*, as to them seem'd best. But as the Subjects found the Yoke to be too heavy and insupportable ; so they address'd themselves in their Petitions to the Kings their Sovereigns, to have that Yoke made easier, and their Burden lighter, especially in such Particulars of which they were most sensible at the present time. By this means they obtain'd, first to have the Laws of *Edward the Confessor* ; and by the same (that is to say, by pouring out their Prayers and Desires unto them) did they obtain most of the Laws and Statutes which are now remaining of King *Henry the Third* and King *Edward the First*. From whom, as also from *Henry I.* and King *John*, we may derive all those Privileges we now enjoy ; most of which, as they were issued at the first, either in form of Charters under the Great Seal, or else as Proclamations of Grace and Favour ; so do they carry still this Mark of their first procuring by these Expressions, *The King willeth, the King commandeth, the King ordaineth, the King provideth, the King grants, &c.* And when the Kings were pleas'd to call their Estates together, it was not out of an opinion that they could not part with their Power, or dispense their Favours as they thought good, or abate any thing of the Severity of their former Government without the Approbation and Consent of their People ; but out of a just Fear, lest any one of the Three Estates (I mean the Clergy, Nobility, and the Commons) should insist on any thing which might be prejudicial to the other two. The Commons being always on the craving Part, and suffering as much perhaps from their immediate Lords, as from their King, might possibly have asked some things which were as much derogatory to the Lords, (under whom they held) as of their Sovereign Liege the King, the chief Lord of all. In this respect the Council and Consent, as well of the Prelates as the Temporal Lords, was accounted necessary in passing of all Acts of Grace and Favour to the People : Because that having many Royalties, and large Immunities of their own, with a more near relation to the Person, and a greater Interest in the Honour of their Lord the King ; nothing should pass unto the Prejudice and Diminution of their own Estates, or the Disabling of the King to support his Sovereignty.

F. I confess you have given a plausible Account concerning the Government of *William I.* whom you call the *Conqueror* : Whereas if it be more exactly look'd into, it will be found that he had no more Power of making Laws without the Consent of his Great Council, than any of his Predecessors ; neither had he any such Despotical Power as you imagine, over the Lives and Fortunes of all his Subjects ; for whether we consider them as *Normans, French or Flemmings*, or whether as *English*, it will be all one : For if, as *Dr. Brady* supposes, these latter were quite turned out of their Estates, and that they were by him wholly given to the former ; then these *French and Normans*, being Conquerors together with him, would never have submitted to any other Government than what they enjoyed in their own Countries, each of which was then governed by Kings or Dukes, together with a Great Council, or Assembly of the Estates : And we find, that when succeeding Kings would have oppress'd and tyrannized over their Heirs and Descendants, they, together with the old *English*, took up Arms, and defended their Liberties, and never laid them down until they had obtained their just Rights and Liberties contain'd in the Great Charters of King *John*, and *Henry the Third*. And which (as *Matth. Paris* himself tells us in the Reign of King *John*) contained for Anno 1215. the greatest part the ancient Laws and Customs of the Kingdom : And therefore by the Statute, called *Confirmatio Chartarum*, 25 *Edw. I.* it is adjudg'd in full Parliament, That the Great Charter, and Charter of the Forest, shall be taken as Common Law. So that they were not any new Grants, but rather Confirmations of their ancient Rights and Liberties, as my Lord *Coke* very well observes in his excellent Preface to his 2d *Institutes* ; where he tells us, That *Magna Charta* is for the most part declaratory

Chap. 24.
p. 110.

claratory of the principal Grounds of the Fundamental Laws of England; and for the Residue, is Additional to supply some Defects of the Common Law: With whom likewise agrees one of his learned Successors, the late Earl of Clarendon, in his Survey of the *Leviathan*, when he tells us, *That those Laws and Customs which were before the Conquest, are the same which this Nation or Kingdom have been ever since governed by to this Day.*

And as for the Laws of *Edward the Confessor*, though it is true, that *William the Conqueror* regranting and confirmed them; yet was it no more than what he was oblig'd in Conscience and Honour to perform and observe, since he was admitted to the Crown by the general Consent of the Clergy, Nobility and People; and at his Coronation (as well as afterward) swore to observe the Laws of *King Edward*: And by the way, though these Laws are called the Laws of *King Edward*, yet *William of Malmesbury* long since observ'd, *That they were called his Laws, Non quas tulit, sed quas observaverit*; that is, he had only collected them into one body, and ratified them with the Assent of his Great Council. And that these Laws were more than once sworn to, and confirmed by *King William* himself, appears by the Story of *Frederick Abbat of St. Albans*, who frighted him into a Confirmation of them by Oath, for fear of a general Insurrection of the People: So that if he, or his Son *Rufus*, made any Breaches upon their Liberties, they were, *ex postliminio*, restored to them by the *Magna Charta's* of *Henry I.* *King Stephen*, *King Henry II.* *King John*, and *King Henry the Third*. And those Oppressions, contrary thereunto, are branded by all Historians as notorious Perjuries and Wrongs to the Subjects.

Hist. Ang.
Script. X.
Col. 483.

It. Col. 1653.

But that *King William* the First altered nothing material in the Fundamental Constitutions of the Government, whatever he might do in some less material Customs or Laws, which he brought with him out of his own Country, appears plainly by this, which you cannot deny, that he often assembled his Great Council, (as his *English* Predecessors had done) and that in them were dispatched all the great Causes and Complaints of the Kingdom. And for this, I will give you the Testimony of two very ancient Historians: The first is *Radolphus de Diceto*, who in *Anno 1071*, tells us, *That the Complaint of Wulstan Bishop of Worcester, was heard and ended in Consilio celebrato in loco qui vocatur Pedreda, coram Rege, & Doroberniæ Archiepiscopo, & Primatibus totius Regni.* The next is *Gervasius Dorobernensis*, who thus relates it of *Lanfranc* Archbishop of *Canterbury*; *Eligentibus eum Senioribus ejusdem Ecclesiæ, & Episcopis, ac Principibus, Clero, & Populo Angliæ, in Curia Regis, in Assumptione Sanctæ Mariæ.* Here the *Episcopi & Principes*, Bishops and Princes, the *Cleri & Populus*, the Clergy and People, or Laity, were the same Persons, and only expressive of one another, and all had Votes in this Election.

B. A. P.

M. I pray give me leave to interrupt you a little: I will not deny but that the Conqueror did often assemble Great Councils of his Bishops, and Great Lords, commonly called in Historians, *Principes* or *Primates*; yet I think I may boldly affirm, that there were no *Englishmen* in those Councils, or that they made any Laws for the Benefit of *Englishmen*, who were kept under by those *Normans*, who then enjoyed their Estates; much less was there any such thing as Commons either by themselves, or their Representatives in those Assemblies, which then consisted wholly of the King's Feudal Tenants *in Capite*, and of no other, as *Dr. B.* hath very plainly shewn us: And when *King William* made Laws, it is much to be doubted whether he made them so much as with the Consent of his Great Council, or not; for the Title to the *French* and *Latin* Copies of his Laws, runs thus, put into *English*, *These are the Laws and Customs which William the King granted to all his People of England after the Conquest, or Subduing of the Land: They are the same which Edward the King, his Kinsman, before him observed.* In this Preface we have only to note, that the Laws are expressly said to be the King's Grant, and the Supplemental Laws writ in the *Red Book* of the *Exchequer*, are by way of Charter, or Grant, thus; *Wilhelmus Rex Anglorum, &c. Omnibus hominibus suis Francis, & Anglis, salutem*; and all along the Authoritative Parts are expressed by *Statuimus, volumus, interdiciamus, prohibemus, præcipimus*. So that by these Expressions in his Laws, the absolute Sovereignty of the Conqueror in the point of Law-giving is manifest. I shall content myself with a very few Authorities, because the matter is so plain; *Ordericus Vitalis* saith thus, *Eamque* (i. e. *England*) *Gulielmus Rex suis Legibus com-*
mode

F. E. M. G.
p. 206.

It. S. 1.

modi subegit. And *Eadmer*, Contemporary with the Conqueror, in his History, thus; *Ufus atque leges, quas patres sui, & ipse in Normannia solebant, in Anglia scribere volens: Cuncta divina, simul & humana ejus nutum expectabant.* From whence you may see, that all Matters, as well Spiritual as Temporal, depended upon his sole Will.

And though we have no particular Account of what Laws his Son *William Rufus* made, yet we may presume, according to the Testimony of Historians, that he was altogether as absolute in those Councils he call'd, as his Father, as may be seen in *Eadmerus* his Account of his Transactions with Archbishop *Anselm*. So that it is certain he governed by his own absolute Authority, raising what Money he pleas'd upon his Subjects. 'Tis true, that in the Reign of his Successor *Henry the First*, the People found some little Relaxation, by reason of the Charter he made them, containing several Mitigations of the Severity of the Feudal Laws, as also those of *Forests*; yet even these are said to be made by his own single Grant and Authority, though I confess it was granted in a Great Council. So likewise in *Florence of Worcester*, we find that in 28 of *Henry I.* That King confirmed the Acts of a Synod, or Council of the Clergy of the Province of Canterbury, and gave his Royal Assent to them. *Eadmer. Hist. Novel. l. 1. Pag. 503.*

As for King *Stephen*, though he was a notorious Usurper, and set up and crown'd by a Faction of Bishops, and some few Temporal Lords; and that not long after his Coronation, he in a Great Council at *Oxford* granted to all his Subjects another Charter of divers Privileges, and Freedoms from the former Exactions: Yet the Words of the Charter are in his own Name, and by his own Authority solely, as appears by these Words; *Observari precipio, & constituo.* But *Richard*, Prior of *Hexham* alias *Hugulstad*, in his Chronicle, closes his Charter thus; *Hec omnia concedo, & confirmo sub tua Regia, & justa Dignitate mea.* From which Words it is plain, that he never meant to part with any of the just and necessary Prerogatives of his Crown. *J. E. M. G. Pag. 215. Vol. X. S. 2.*

So likewise King *Henry the Second*, in a Great or General Council held at *London*, confirmed the Great Charter granted by King *Henry the First*, his Grandfather, but this Charter also runs wholly in the King's own Name, without any mention of its being assented to either by the Bishops or Nobles: And as for the Constitutions made at the Great Council of *Clarendon*, though that King made the Archbishops, Bishops, with all the Clergy, as also the Earls, Barons and Nobility, all swear to observe them; yet the enacting Part proceeded only from the King, as appears by their very Title thus, *Assisse Henrici Regis facta apud Clarendon, &c.* And *Mat. Paris* concludes these Constitutions with, *Decrevit eum Rex.* From whence it appears, that it was the King alone that decreed and constituted those Laws. *Joh. 200.*

I shall not say much of the Great Councils in *Richard the First's* Time, since he did not reign long enough to call many, but in that held at *Nottingham*, we find that the King disleized *Gerard de Canville* and others; and that the King appointed to be given him two Shillings on every Carucate of Land throughout *England*, &c. From whence I shall observe that the Words *Rex precepit, constituit, &c.* as they are in this Historian, shew, that the King then had solely the authoritative Power of passing all Consultations of these Councils into binding Laws, even where Money was to be levied on the Subjects, and that seizure was to be made of their Estates. But to come to the more troublesome and perplex'd Reign of King *John*, in which there were many Great Councils holden, yet I shall instance but in some few of them mention'd in *Mat. Paris*, as that of *St. Albans*, held by *Jeffery Fitz-peter* and the Bishop of *Winchester*, in this King's Absence, where *ex parte Regis* it was firmly enjoyn'd, under penalty of Life and Limb, that the Laws of King *Henry*, his Grandfather, should be kept by all in his Kingdom. From whence we may observe, that the Laws had their Force only from the King's Authority, as appears by this Expression, *ex parte Regis firmiter est praeceptum.* And when afterwards at *Runnymede* he was compelled to sign the first *Magna Charta*, I own it was done in a Great Council of Bishops, Earls and Barons, as well those who stood for him as against him: Yet that it proceeded wholly from his own good Will, is plain from the *Charta de Foresta* of this King, as appears by these Words, *Ad emendationem Regni nostri, spontanea, & bona voluntate nostra dedimus, concessimus pro nobis, & heredibus nostris, has libertates subscriptas.* From all which Charters of Liberties we *In R. Hoveden, p. 419. Fol. 201. J. E. M. G. p. 211.*

may conclude, that the Petitions of the People were drawn into the Form of a Charter, and passed under the King's Seal as his meer voluntary free Grants and Concessions, without their Votes, Suffrages and Authority. And sometimes such Rights of Liberties have been bestowed and declared by our Kings, by way of Answer to the Petitions of the Lords and Commons; and that this Custom is not yet discontinued, appears by the Answer of King *Charles the First* to the *Petition of Right*, when no other Answer would please the Commons but the King's express Assent to their Petition, in these Words, *Soit Droit fait comme est desire*. But to return to the Reign of King *Henry the Third*.

F. I beseech you, Sir, give me leave now to answer what you have already alledged out of our Historians for the Supreme and Absolute Power of our Kings, before we proceed further to less obscure Times. And therefore I must tell you, that you have in this long Speech of yours made use of all the Artifice of an Advocate for a Party, viz. in urging all that can any way make for you, and sily passing over whatsoever may make against you. And to begin with your Story of King *William the First*, I shall not now dispute whether there were any *Englishmen* in those Great Councils, or whether they consisted only of Tenants in Capite, since I shall defer that Question till anon. But as for the *English* you have put upon the *French* Title of the Laws of this King, it is not fairly rendered; for in the *French* it is, *Apres le Conquest de la terre*, which doth not always signifie a subduing by Force, but by any other ways of Acquisition different from that of Hereditary Succession;

Matt. Paris. which *Matt. Paris* was long since aware of, when, writing of this King, he says, *Rex Anglia ex Conquestu dicitur, tamen quod beatus Edwardus, eo quod herede caruit, Regnum legavit Willielmo Bastardo Duci Normannorum*. With whom Sir Henry Spellman, in his Glossary, agrees, *Willielmus primus Conquestor dicitur, quia Angliam conquestit, i. e. acquisivit, purchased, non quod subegit*. And the learned Sir John Skene, in his Book *Pag. 39. Tit. de verborum significatione*, writes thus, *Conquestus significat Lands quibilk ony Person acquiris and possessis, privato Jure, vel singulari titulo, vel donatione, vel singulari aliquo contractu*. And therefore I very much doubt, whether or no the *Latin* Version of these Words, *Apres le Conquest de la terre, post subactam terram*, be as antient as the *French* Original, and be not rather the Version of some Clerk or Monk who lived long after.

But whether these Laws were not intended as well for the benefit of the *English* as *Norman* Subjects, I appeal to this Title itself, tho' you have omitted part of it,

V. Leges. *Hæ sunt Leges & Consuetudines quas Gulielmus Rex concessit Universo Populo Anglia post Guil. I. Edit. ad finem Lambardi Archæionom. per Rog. Twissden.* *subactam terram*. So that unless the *English* were none of the People of *England*, these Laws were as well intended for the one as the other: And I appeal to that Charter of King *William* you have now quoted, whether or no it doth not begin, *Omnibus hominibus suis Francis & Anglis*; by which Words certainly the *English*, as well as *Normans*, had an interest in those Laws and Privileges therein granted. I mention this only by the by, in answer to what you have said.

But to return to what I am chiefly concerned to speak of, the King's sole Legislative Power. In the first place, I shall not deny, but as this Kingdom is a limited Monarchy, so it is suitable to the Honour and Dignity of the Monarch, that all Laws and Constitutions should run in his Name, and are often said to be made by him, tho' in a Political or Legal Sense, they could not be made without the Advice and Consent of his Great Council or Parliament. And that this was the Custom in the Time of *William the First*, as of all others his Successors, I need quote only the 55th Law of this King, in these Words, *Prout Statutum est eis (scil. Liberis hominibus) & illis a nobis datum & concessum jure hereditario in perpetuum, per Commune Concilium totius Regni nostri prædicti*. From whence you may observe, that this King could not then make Laws without the Consent of the Common Council of his whole Kingdom: And tho' he might do many arbitrary and illegal Things to the prejudice of the old *English* Liberties, yet this was no more his Right, nor any more to be quoted as a Precedent, than his seizing upon the Bishops and Abbots Lands, and violently taking away the Plate out of Churches and Monasteries (as Historians tell us he did) could give him a Right to them.

I have not much to observe upon the Reign of *William Rufus*, since we have none of his Laws left us, if ever he made any. But thus much we plainly find from the Historians, and especially *Eadmerus*, that he called divers Great Councils of all the Nobility of the Kingdom; especially about his difference with *Anselm*, whom,

whom, it is plain, he could not condemn without the Consent of this Great Council. But to come to the Reign of King Henry the First, it appears plainly by *W. Malmesbury* and *Matt. Paris*, that he was elected and crowned King by the common Suffrages and Favour of the Clergy and People; and certainly that Council, whose Votes could make a King, was also necessary to all such Laws as he was to make: And you yourself have granted, that this Charter of his was made in a Great Council; and it appears in *Matt. Paris*, as also in the Laws of this King, published by Mr. Lambard, *That the Archbishops, Bishops, Barons, Earls, Viscounts, or Sheriffs, Optimates & totius Regni Anglia*, were Witnesses to this Charter. And I can tell you of a very antient Charter of King John, which recites that the Laws were made *de Communi Consilio, & Assensu Baronum Regni Anglia*. It became usual in succeeding Ages, at the Coronations of our English Kings, to confer, make and ordain Laws, *de Assensu Baronum Regni, vel per Commune Concilium Regni, i. e. the Parliament*, as it was afterwards called.

As for Henry the Second's Reign, it is apparent by the Laws of this King, in *Spellman's Councils*, that he granted his Charter in a Great or General Council, and consequently they must likewise give their Assents to it, as well as to that of his Grandfather Henry the First. And tho' in the Constitutions of *Clarendon*, the King alone is said to have made or decreed them; yet nothing is plainer than that the King could not make them without the Advice and Consent of his Great Council; or else to what purpose were they to be called? and if their Assent was necessary, certainly they had also a hand in making those Constitutions.

But that the King could not condemn any Peer or Great Man of the Kingdom in those Days, without a legal Tryal in the Great Council of the Kingdom, I need go no further than a Council summoned by *Hubert Archbishop of Canterbury*, as King Richard's Justiciary in his Absence; where *Roger Hoveden* tells us, that having shewed the Letters of Earl John to the Bishops, Earls and Barons, *per Commune Concilium Regni definitum est, quod Comes Johannes dissisteretur*; which interprets that Passage you have quoted out of the same Author, that the King, in a Great Council, dis seized *Gerard Canville* and others; that is, by the Authority and Sentence of the said Council. And so likewise in the same Sense is to be understood those Words you mentioned, *The King appointed to be given him, constituit sibi dari*, two Shillings on every Plough-land; that is, he desired it to be given him by them: For if he could have taken it without their Consent, to what purpose did he propose it in that Council? if he could have absolutely demanded it, why should he only request or desire it of them?

So likewise for the Great Council in King John's Time, nothing is more plain than that they were Parties to all the Laws that were made in his Time; and that even the Great Charter was a Statute to which their Assent was likewise necessary, I shall shew you by and by, when I come to speak of the Great Charter of King Henry the Third, and the several Confirmations of it by his Successors. But if either *William Rufus*, King John, or any other King, ever levied any Taxes upon the People, without Consent of the Great Council or Parliament, it was contrary to our ancient Laws and the Liberties of the Subjects, and particularly to the 55th Law of *William the First* (part of which I have already cited) It begins thus; *Volumus etiam ac firmiter precipimus & concedimus, ut liberi homines totius Monarchiæ Regni nostri prædicti habeant, & teneant terras suas, & possessiones suas, bene & in pace libere ab omni exactione injusta, & ab omni Tallagio; ita quod nihil ab eis exigatur, vel capiatur, nisi Servitium suum liberum, quod de jure nobis facere debent, & facere tenentur, & prout statutum est eis, &c.* So that whatsoever was done at any time contrary to this Statute was illegal, and consequently ought not to be quoted as any part of the King's Prerogative.

But that the Nobility and People of England had divers Rights and Liberties before the Time of King John, and of his granting that Charter, appears by its Conclusion in these Words; *Salvis Archiepiscopis, Abbatibus, Prioribus, Templariis, Hospitalariis, Comitibus, Baronibus, Militibus, & omnibus aliis tam Ecclesiasticis, Personis quam secularibus libertatibus, quas prius habuerunt.* And as for the rest of the Liberties granted by this Charter, tho' they are said to have been granted from the King's meer good Will, yet that is recited only to make it more strong against himself, since the Nobility and People of England claimed those Liberties as their ancient undoubted Right. And the same Author (as I have already hinted)

*Chart. m. de-
ic feedi
illa
I. fe-
in archi-
vis Archiepif-
Cant.*

Lamb.

*In Matt.
uris
J. de laus,
l. 259. 30.*

Item 254.

expressly tells us, that this Charter contained *Maxima ex parte leges antiquas.*— And a little lower he relates where those Liberties were to be found, *Capitula quoque legum & libertatum quæ ibi Magnates confirmari quærebant partim in Charta Regis Henrici superius scripta sunt, partimque ex Legibus Regis Edwardi antiquis excerpta.* So that they were not only the effect of the King's meer Grace and Favour, as you suppose. But if you please now to descend to the Reign of *Henry the Third*, and so downward, from which Time our eldest printed Statutes bare Date, let us see if I cannot answer all those Arguments which the Gentlemen of your Opinion have thence brought for the King's sole legislative Power.

M. Tho' I do not allow of your Notion of the Conqueror's not being properly and really so, as I shall shew you another Time, when I shall more particularly consider that Argument of the Right of Conquest in King *William* and all his Successors; therefore I do at present readily assent to your Proposal, and it was the very thing I was coming to: And therefore I shall begin with the *Magna Charta* of *Henry the Third*, which begins thus, *Know ye, that we of our meer and free Will have given these Liberties.* The Statute *de Scaccario*, anno 51 *Hen. 3.* begins thus; *The King commandeth that all manner of Bayliffs, &c.* The Statute *de Districione Scaccarii* made the same Year, runs thus; *It is provided and ordained. The King willeth.* The Statute of *Malbridge* 52 *Hen. 3.* And he, i. e. the King, hath appointed all these Acts, Ordinances and Statutes to be observed of all his Subjects. If we come to the Reign of his Son *Edward the First*, and begin with the Statute of *Westminster*, 1. it is there said in the Preamble, *These are the Acts of King Edward the First, made at his first Parliament by his Council, and by the Assent of the Archbishops, Bishops, &c.* And in the first Chapter 'tis said, *The King hath ordained and established these Acts.* And tho' I grant that in divers Statutes of this King, as in this of *Westminster*, it is recited that the King, by the Advice of his Council, or Assent of the Archbishops, Bishops, Earls, Barons, &c. have made, provided, ordained or established such and such Laws; yet it is plain, that the enacting or decreeing part is wholly ascribed to the King, in all those Statutes wherein such Words are found, as I shall make it appear more plainly by the Statute of *Acton Burnel*, made in 13 *Edw. I.* where it is said, *The King by himself, and all his Council hath ordained and established.* And in the Statute of *Westminster* 3. 18 *Edw. I.* chap. 1. *Our Lord the King, in his Parliament at Westminster, at the Instance of the great Men of the Realm, hath granted, provided and ordained.* In the Statute *De iis qui ponendi sunt in Assizes*, 21 *Edw. I.* *Our Lord the King in his Parliament holden, &c. hath ordained, that, &c.* The Statute of *Quo Warranto* 18 *Edw. I.* runs thus; *Our Lord the King, at his Parliament holden at Westminster, of his special Grace, and for the Affection he beareth unto his Prelates, Earls and Barons, hath granted, that, &c.* 1 *Edw. II.* begins thus; *Our Lord the King hath granted.* The Statute of *Gavelet*, 10 *Edw. II.* begins thus; *It is provided by our Lord the King, and his Justices.* The Statute of *Carlisle*, 15 *Edw. II.* begins thus; *The King unto the Justices of his Bench sendeth greeting. Whereas of late we have ordained, &c.*

But if we come to the Reign of his Son *Edward the Third*, the Prefaces to most of the Statutes made in his Reign run thus; *Our Lord the King, by the Assent of the Prelates, Earls, &c. and at the Request of his People, hath granted and established; or else at the Request of the Commonalty, hath ordained, &c.* The like Style continued during the Reigns of *Richard the Second*, *Henry the Fourth* and *Henry the Fifth*, with very little Alteration only it ran thus commonly; *At the Request of the Prelates, Dukes, Earls and Barons, and at the Instance and special Request of the Commons, the King hath ordained, &c.* Whereby we see a plain difference in the Phrases of the Statutes of those Times; for it is the Lords that give their Assent, whereas the Commons only Petitioned; but it is the King alone who ordains and establishes. I confess indeed, that under some Princes of bad Titles, as in particular, under the Minority of *Henry the Sixth*, there began some Alteration in the form of penning the enacting part of most Statutes that were then made, and that unto those usual Words, which were inserted ordinarily into the Body of the Acts, from the beginning of the Reign of that King, viz. *by the Advice and Assent of the Lords Spiritual and Temporal, and at the special Instance and Request of the Commons*, there was added, *by the Authority of the said Parliament.* But it is still to be observed, that tho' these Words were added to the former Clause, yet the Power of granting and ordaining was still acknowledged to belong to the King alone, as appears by these Acts

Acts of Parliament of that King, viz. 3 Hen. VI. ch. 2. 8 Hen. VI. ch. 3. Where it is said, *Our Lord the King, by the Advice and Assent, and at the Request aforesaid, hath ordained and granted, or ordained and established by the Authority of this Parliament.* And thus it generally stood (tho' a general Rule may have some Exceptions) till the beginning of the Reign of Henry the Seventh, about which time, that usual Clause at the special Instance or Request of the Commons, began by little and little to be laid aside, and that of their Advice or Assent, to be inserted in the place thereof: For which I do refer you to the Statute Book at large; which Form, I confess, continues to this Day; yet even in Henry the Seventh's Time, in the first of that King and the seventh Chapter it runs in this Stile, *The King our Sovereign Lord, of his noble and abundant Grace, by the Advice and Assent of the Lords Spiritual and Temporal, at the Supplication of the Commons in the said Parliament assembled, and by Authority of the same, ordaineth.* And tho' the Statutes of Henry the Eighth do generally agree in their Stile with those of his Father; yet in his Time also many Acts were drawn up in Form of Petitions; as 3 Hen. VIII. ch. 14. *Praying your Highness, the Commons in this present Parliament assembled.* And 5 Hen. VIII. ch. 4. *Praying the Commons in this present Parliament.* And in the Reign of his Son Edward the Sixth, tho' I grant that most of his Acts do run in the usual Form; yet this one is very remarkable, 1 Edw. VI. ch. 4. *Wherefore the King our Sovereign Lord, &c. at the humble Petition and Suit of the Lords and Commons in this present Parliament assembled, doth Declare, Ordain and Enact, by the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same:* which last Words, tho' they may seem to refer to the Parliament, and may make Men think that the Lords and Commons did then pretend some Title unto the Power of making Laws: Yet neither Adviling nor Assenting are so operative in the present Case, as to transfer the Power of making Laws to such as do advise about them, or assent unto them. Nor can the Alteration of the Forms and Stiles used in ancient Times import an Alteration of the Form of Government, unless it can be shewed (as I think it cannot) that any of our Kings did renounce that Power which properly and solely did belong unto them, or did by any solemn Act of Communication confer the same upon the Lords and Commons convened in Parliament: And therefore upon the whole Matter, since in almost all our most ancient Statutes, it is precisely express'd that they were made by the King himself; the meaning of those general Words used in latter Times, that the Statutes are made by Authority of Parliament, are particularly explained in former Statutes, viz. That the King Ordaineth, the Lords Advise, the Commons Consent, as by comparing the Writs with the Statutes that expound the Writs will evidently appear.

F. In answer to those Authorities you have now brought, I doubt not but I shall give you others of as great weight, that prove the direct contrary to what you now assert. To begin with your Instance of *Magna Charta*, I shall shew that those Charters that were granted and confirmed by Henry the Third, were not his Acts or Grants alone, but the Acts also of the whole Kingdom represented in Parliament. We have two express Declarations for the one, in the 25th of King Edward the First; where is to be found in the Parliament Roll of that Year, a Confirmation of the great Charter of Liberties and Forests, in these Words, which I shall render to you in *English*, out of the old *French*, for your better understanding. *Know ye, that the Honour of God and Holy Church, and for the profit of our whole Realm; We have granted for us and to our Heirs, that the Great Charter of Franchises and Forests, which were made by the common Assent of the whole Realm, in the Time of King Henry our Father, should be held in all Points without any Blemishment.* So likewise we find another Confirmation of those Charters in the Parliament Rolls of the 15th Year of Edward the Third, which being in old *French* I shall render it into *English*. *Imprimis, It is accorded and assented, that the Franchise of Holy Church and the Great Charter of Forest, and the other Statutes made by our said Lord the King, and his Progenitors the Peers and the Commons of the Land, for the common profit of the People, shall be firmly kept and maintained in all Points.* So that you may hence plainly see, that the King himself, with the whole Parliament, declare, and that in two several Kings Reigns, that the Great Charters were not only the free Grants of King Henry, but also the joint Acts of the Common Council of the whole Kingdom; and why King John's Charter should not be made by the like Authority, being one of his Progenitors, I see no reason, especially if we consider that that Charter was first drawn

drawn up by the Barons in the Form in which we find it, and was passed by that King, under his Great Seal, in that vast General Council or Assembly at *Runnymede*. And certainly, whoever can draw up a Law, and can offer it to a Prince to confirm, and without whose Consent and Acceptance it would not be good, must needs have a share in the making of it.

As for your other Instances of those old Statutes made in the Reign of *Henry the Third*, though I grant they begin, as you say, in the King's Name : Yet if you would but have read a little further, you would have found that in divers of them the Bishops, Earls and Barons gave their Consents to them : And for the Proof of this I shall begin with one of the antientest Statutes we have left us, *viz.* that of *Merton*, in the Preamble of which it is recited, *Provisum est in Curia Domini Regis apud Merton*, where after the Parties that were present at the making of the Laws it concludes thus in the *Latin Copies*, *ita provisum est & concessum tam a predictis Archiepiscopis, Episcopis, Comitibus, Baronibus, quam ab ipso Rege, & aliis* ; where you see the providing and enacting part is ascribed to the Bishops, Earls and Barons, as well as to the King, who is here mentioned almost last of all. And tho' I confess that there was then no set Form of penning of Statutes in that honest and plain Age, when Parliaments did not last so many Days as they do now Weeks ; and that the King's Judges and Council drew up the Acts, after the Parliament was up, in what Form they pleased, sometimes leaving out any mention of the Bishops, sometimes of the Temporal Lords, and most commonly of the Commons ; yet that they did all give their Consents to such Acts, appears by the Statute of *Westminster 1.* which you have already cited, where the Assent of the Archbishops, Bishops, &c. Counts, Earls, Barons, and all the Commonalty of the Land, is expressly mentioned. So likewise the Statute of the 51st Year of King *Henry the Third*, concerning Measures, begins thus ; *Per ordinationes totius Regni Angliæ fuit mensura Domini Regis composita.*

But farther to convince you, that in the Opinion of the Lord Chancellor, and those learned Judges who framed the Writs that were issued out upon any of these antient Statutes, you will find that they who lived in those very Times, believed those Statutes were made not by the King alone, but by him and the Common Council of the Kingdom ; which Writs, as you may see in the Register

Vi. Regist. of Writs, runs thus ; Rex Vicecom, &c. Salut. Si A fecerit, &c. tunc summonias, &c. B. Brev. p. 174. quod sit coram Justiciarijs, &c. Ofsensuru quare, cum de Communi Concilio Regni Nostri & dein per tot. Titulum Magna Charta, Marlbridge, Merton, Glocester, &c. which have all of them this or the like Recitals, cum de Statuto, or juxta formam Statuti, de Communi Concilio Regni nostri Ang. inde provisi. The like Instances I could give you upon the Statute of Marlbridge, and divers other old Statutes, in which the King, by the Statute itself, seems only to have enacted it ; and yet you may see that our Sages of the Law were very well convinced that those Statutes were made not by the King alone, but by the whole Common Council of England : So that there is no avoiding the Conclusion, that the Great Council, or Parliament, had then a great share in the Legislative Power ; unless you can suppose the King alone to have been the whole Common Council of the Kingdom, mentioned in these antient Writs.

But as for the rest of your Instances of *Edward the Second's* and *Edward the Third's* Times, I think I can shew you that there is no general Rule to be drawn, from some few Examples ; for though it is very true that the first of *Edward the Second* begins thus ; *Our Lord the King hath granted, &c.* Yet it is plain, by the Statute itself, that it was made in and with the Assent of Parliament. The like I may say of the rest of the Statutes of this King's Reign, though they do not all agree in Form, as you may see by the Statute of Sheriffs, 9 *Edw. II. Our Lord the King, by the Assent of the Prelates, Earls, Barons, and other great Estates, hath ordained and established.* And though you would fain draw some mighty Consequence from those Phrases in the Statutes of *Edward the Third*, and many of his Successors, *by the Assent of the Lords, and at the Request of the Commons* ; as if the Consent of the latter were not as necessary as the former : Yet indeed it is a meer difference in Form, and proceeds only from hence, that that Estate which found itself grieved, always Petitioned the King for Redress, and which amounted to as much as a Consent ; for you shall always find that the petitioning Part still refers to that Body which was then oppressed, without their giving any other Assent ; for certainly their requesting to have an

Act

As made, doth necessarily express their Consent. And to prove what I have now said by Examples, pray see the 8th of *Hen. VI. c. 1.* where it is recited in the Preamble, "That our Sovereign Lord the King, willing graciously to provide for the Security and Quiet of the said Prelates and Clergy, at the Supplication of the said Prelates, &c. and of the Assent of the Great Men and Commons afore said, hath Ordained and Establish'd." Where you may see, that the Assent of the Prelates is not here at all mentioned, because it was needless, as being made at their Request. And if Praying and Requesting should destroy the Legislative Power, I doubt whether *Edward III.* did not give away his, in his 14th Year, in a Statute concerning the Subsidy of Wools. The Preamble runs thus: "Nevertheless the King prayeth the Earls, Barons, and all the Commonalty, for the great Business which he hath in hand, &c. that they would grant him some Aid upon Wools, Leather, &c. Whereupon Deliberation being had, the said Prelates, Barons, and Commons of the Kingdom, have granted him 40 Shillings to be taken on every Sack of Wool."

But to convince you, that in the Reigns of *Edward III.* and *Richard II.* the Three Estates had a concurrent Authority with the King in the Legislative, I shall give you two Precedents more out of our unprinted Parliament Rolls: The first is 31 *Ed. III. m. 13.* which, being a Title to certain Statutes, begins thus: *Quadam Ordinationes & Statuta, facta pro communi utilitate Regni, per Regem, Prælatos, Duces, Comites, Barones, & Communitatem Regni Angliæ.* So likewise in *Stat. Roll* of 5 *Rich. II. m. 21.* the Title is, *Quadam Concordiæ, sive Ordinationes, factæ de communi assensu Regis, Procerum, Magnatum, & Communitatis Regni Angliæ.* Where no Man can doubt but that the Word *Communitates*, in these Records, must mean the *Commons*, all the other Estates having been already mentioned.

But to return to the matter, to let you see that not only the *Commons*, but also the *Lords*, have been oftentimes Petitioners, pray see these Authorities. The 1st is the Statute of Provisors, 27 *Edw. 3.* runs thus: "Our Sovereign Lord the King, with the Assent and Prayers of the Great Men, and the Commons of the Realm of *England*, hath Ordained, &c." And in the 4th of *Edw. IV.* it is recited thus: "The King, by the Assent, Advice, Request, and Authority, of his Lords Spiritual, Temporal, and Commons, &c. hath Ordain'd and Establish'd." In the Preamble of the Statute of 1 *Edw. VI. c. 4.* it is thus: "Wherefore the King, our Sovereign Lord, minding and entirely desiring—— at the humble Petition and Suit of the Lords and Commons in this present Parliament assembled, doth Declare, Ordain and Enact, by the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same." And that the Assent of the *Commons* was always necessary to the making of Laws, not as bare Petitioners, but as Assenters too, as well as the *Lords*, appears by this Protestation or Declaration of the *Commons* to *Edw. III.* which is still to be found in the *Parliament Rolls* of 51 of N. 46. that King, which I shall read to you in *English*, out of the *Law French*, which perhaps you are not used to: "Also the said *Commons* do petition our Lord the King, that no Statute or Ordinance may be made or granted at the Petition of the Clergy, unless it be by the Assent of the Commons; neither that the said *Commons* should be obliged by any Constitution, which they may make for their Advantage, without the Assent of the said *Commons*: For they will not be obliged to any of your (*viz.* the King's) Statutes or Ordinances made without their Assent."

M. I do not deny, but that the Assent of the *Commons*, as well as *Lords*, hath been allowed as necessary for a long time; but whether the Consent of either at first was so, is a great doubt, since we find the first antient Statutes (as I have already observed) to have been made wholly by the King alone. And I think the most antient Laws are the best Interpreters of the Original Legislative Power; *E. F. G. 7.* and thence it appears, that many Provisions, Ordinances and Proclamations, made heretofore out of Parliament, have been always acknowledged for Laws and Statutes. We have among the printed Statutes, to this purpose, one called the *Statute of Ireland*, dated at *Westminster* the 9th of February, 14 *Hen. III.* which is nothing but a Letter of the King to *Gerard Fitz-Maurice*, Justiciar of *Ireland*. The Explanations of the Statute of *Gloucester*, made by the King and his Justices only, were received always for Statutes, and are still printed with them. Also the Statute

tute made for the Correction of the 12th Chap. of the Statute of *Gloucester*, was signed under the Great Seal, and sent to the Justices of the Bench, after the manner of a Writ Patent, with a certain Writ closed, dated by the King's Hand at *Westminster*, 2 Maii 9 Ed. I. requiring, "That they should do and execute all and every thing contained in it, though the same doth not accord with the Statute of *Gloucester* in all things." 19 Hen. III. a Provision was made *de Assisa Presentacionis*, which was continued and allowed for a Law until the Statute of *Westminster* II. which provides the contrary in express Words. So that in the old Statutes it is hard to distinguish what Laws were made by Kings in Parliament, and what out of Parliament, especially when Kings called the Peers only to Parliament, and of those how many, or whom they pleased (as it appears antiently they did) it was no easy matter to put a Difference between a Council Table and a Parliament, or between a Proclamation and a Statute. Not but that I own, in old Times there was a Distinction between the King's Special or Privy Council, and the Common Council of the Kingdom; and yet his Special Council did sit with the Peers in Parliament, and were as Part thereof, and were of great and extraordinary Authority there, as may appear by divers Acts of Parliament, some of which I have already recited, as the Statute of *Westminster* I. where it is said: *These are the Acts of Edward, made at his 1st Parliament, by his Council.* The Statute of *Acton Burnel*, 13 Ed. I. hath these Words: *The King for himself, and by his Council, hath Ordained and Established.* And in *Articulis super Chartas* there are these Provisions: *Nevertheless, the King and his Council do not intend: And, Both the King and his Council, and all they that were present, Will and Intend, that the Right and Prerogative of his Crown shall be saved to him in all things.* And before these the Commons often petitioned the King; as 1 Edw. III. where *Magna Charta* was confirm'd, the Preamble is thus: *At the Request of the Commonalty, by their Petition made before the King and his Council in Parliament, by the Assent of the Prelates, Earls and Barons, &c.* I could give you many more Examples of this kind, but that it is needless; only these may suffice to let you see, that the King's Council had a great Authority in those Times, and perhaps was as antient as the Great Council it self.

1 E. 3. Stat.
2. Preamb.

J. E. M. G.
p. 234

Pult. p. 111.

Yet I cannot forbear to give you one or two Authorities more, to prove that the King, with the Advice and Consent of a Council of his Earls, Barons, and other Wise Men, hath sometimes taken upon him to repeal all the Statutes made in a precedent Parliament, as contrary to the Laws and Customs of this Realm, and to his Prerogatives and Rights Royal, tho' granted by him in manner of a Statute. And for this you may see the Statute of 15 Ed. III. at large in *Pulton's Collection*. So likewise the Preface of the Statute of *Westminster*, 20 Ed. III. runs thus: That "*We (viz. the King) by the Assent of our Great Men, and other Wise Men of our Council, have ordained, &c.*" Where you may observe, that here is no mention either of Lords Temporal or Commons. I could give you more Examples of this kind, were it not too tedious. From which Statutes it seems plain to me, that this King did sometimes exercise a Prerogative of making and repealing Laws without Consent of Parliament.

H. S. B. D.
p. 721.

In the next place, I desire you to take notice, that these Words you so much rely upon, *viz. By the Authority of this present Parliament*, and, *Be it Enacted by the King, Lords and Commons*, as if they were three co-ordinate Estates, was never in use till the Reign of Hen. VI. and Hen. VII. two notorious Usurpers. And that the King's single Answer to the Lords and Commons Request is a sufficient Act of Parliament, without any mention of the concurrent Authority of the Lords and Commons enacting the same, the Precedent I gave you of K. Charles's Answer to the *Petition of Right* may suffice, though you have not vouchsafed to give me any Return to it. So that I think these Instances may serve, instead of many Arguments, for the proof of this Truth, *That the Legislative Power* (as we phrase it now) *is wholly and solely in the King, although restrained in the Exercise and Use thereof, by constant Custom, unto the Counsel and Consent of the Lords and Commons: For Le Roy le veult*, or the King will have it so, is the Imperative Phrase, by which the Propositions of the Lords and Commons are made Acts of Parliament. And let the Lords and Commons agitate and propound what Laws they please for their Ease and Benefit (as generally all Laws and Statutes are more for the Ease and Benefit of the Subject, than the Advantages of the King) yet as well now, as formerly, in the

time of the Roman Emperors, only *quod Principi placet, legis habet vigorem*; nothing but that which the King pleases to allow of, is to pass for Law: The Laws not taking their coercive Force (as Judicious *Hooker* well observes) from the Quality of such as devise them, but from the Power that giveth them the Strength of *Laws*. So that, to determine the Matter logically, the Legislative Power is either Largely and Improperly, or Strictly and Properly taken: Largely taken, it signifies any Power, which hath the Authority to provide the Materials of a Law, and to judge what is just, convenient, or necessary to be enacted; and to declare when any Matters, duly prepared, are made and granted into a Law: And this Ministerial sort of Legislative Power, improperly so called, the two Houses have and exercise, yet by Authority from the Crown. But then the Legislative Power is Strictly and Properly taken for the Power of Sanction, or for that Commanding, Ordaining Power, which gives Life and Being to the Law, and Force to oblige the Conscience of the Subject; and this is radically and incommunicably in the King, as Sovereign. And therefore (as I have already said) all the ancient Acts run in the King's Name alone; and from the Legislative Power, thus properly taken, the Laws are properly called the King's Laws, and the Violation of them is punishable as such.

F. You have made a very long Speech, and taken a great deal of pains to perplex a Question in it self very easy to be resolved; and to which I need return you no other Answer than what *Bracton* tells us, in his third Book, Chap. 9. *De Actionibus. Nihil aliud potest Rex in terris suis, cum sit Dei minister & vicarius, nisi id solum quod de jure potest: Nec obstat quod dicitur, Quod Principi placet, legis habet vigorem; quia sequitur in fine legis, Cum lege regia, qua de imperio ejus lata est; i. e. non quicquid de voluntate Regis temere presumpsum est, sed quod consilio Magistratum suorum, Rege auctoritatem prestante, & habita super hoc deliberatione.* So that you see, in the time when this Author writ, the King could do no more by his Prerogative, than the Law allowed him to do: And tho' it is true, it is his Will and Authority that gives Vigour to the Law; yet this only, as it is declared in Parliament, and in those Acts which had before received the Consent of his Great Council, here called the King's Magistrates: And therefore you have done what you can to confound the difference between the King's Declaration, or Writs explaining and enforcing the Common Laws of *England*, or else interpreting former Acts of Parliament already made; which was a Prerogative often exercised by the King and his Council in Parliament, which then consisted of all or most of the Judges, and Great Officers of the Kingdom, of which I shall speak more at large by and by. And I confess, we are much in the dark, because our ancient Parliament Rolls are all lost, and consequently the Statutes therein contained: So that we have almost nothing left of them, but such Copies or Remains, as were preserved by Judges and Lawyers in those and succeeding Times, whilst they were still in being.

Therefore I think I may at present boldly affirm, that if that, which you call the Statute of *Ireland*, was so far from being founded upon some former Statute not now in being, it was no Act of Parliament at all, but only the King's Writ to the Chief Justiciar of *Ireland*, commanding and enforcing the Common Law of *England*, in the Case of *Coparceners*, to be observed in *Ireland*. The like I may say to the Explanation of the Statute of *Gloucester*, which might be no more than the Interpretation of the King and his Justices, of the Sense of some Articles in that Statute; and this for its greater Authority was exemplified under the Great Seal, and so sent to all the Courts at *Westminster*, and often to the Sheriffs of all the Counties in *England*; yet without altering the Statute in some Points, as you would have it. The like I may say of that Statute of *Athen Burnel*; and therefore it is very rashly done, to conclude, that tho' we have not the Original Acts and Records of Parliament of that time, that therefore such Statutes were made by the King alone, in his Privy Council. So that I must still continue of the same Opinion with the Great *Selden* in this Point, who in his *Mare Clausum* tells us: "It is most certain, that according to ancient Custom, no Answer is given either by the King, or in the King's Name, to any Parliamentary Bill, before that Bill, whether it be brought in first by the Lords, or by the Commons, hath pass'd both Houses, as is known to all that are versed in Parliamentary Affairs." Which if it hath been the ancient Custom of this Kingdom, it signifies very little in what Form the Law is express'd, whether in the

King's Name only, as giving the last Assent thereto, or else as his Concession to the Lords and Commons Petition, as long as you grant that their Assent was necessary : For sure, whosoever petitions another to do a thing, which he cannot impose upon him without his Request, must give his Consent to the doing it, unless you can prove, that it could be done whether the Petitioner would or not. And this, by the way, will serve to answer an Objection, which, tho' you insist much upon it, is scarce worth it, *viz.* the King's Answer to the Lords and Commons *Petition of Right*, which was indeed no Grant or Concession of any new Rights or Privileges from the King to the People ; but only a Declaration of several antient Rights and Liberties of the Subjects, which had been very much broken and infringed of late ; and therefore the King's Answer was very proper, *Soit Droit fait comme est desire* : But that there is a Right plainly acknowledged, I suppose you will not deny.

The next Mistake you fall into proceeds from your confounding the King's Extraordinary Council in Parliament with the King's Special or Privy Council, and in a manner making this a fourth Estate ; by whom (as you suppose) as well as by the Lords and Commons, Laws were often made ; whereas indeed neither the one nor the other is true. For tho' I grant that there is often mention made, in our antient Statutes or Records, of the King's Council in Parliament ; yet this is not to be understood of his Privy Council, but of a Special Council, with whom our Kings formerly sat during the Time of Parliament, and before whom and to whom, we find, by divers Records, that both the Lords and Commons did often petition, as you your self do truly affirm ; but that this was not the King's Privy Council, but another quite different from it : And to which it seems to me that *Fleta* refers, in his 2d Book, Cap. 2. *Habet enim Rex Curiam suam in Concilio suo in Parliamentis suis ; presentibus Prælati, Comitibus, &c.* And this Council consisted of all the great Officers of the Kingdom, *viz.* the Lord Treasurer, Chancellor, and Keeper of the Privy Seal, Master of the Wardrobe, the Judges of the King's Bench, Common Pleas, Barons of the Exchequer, Justices *Itinerant*, and Justices of Assizes, with such of the dignified Clergy, as it pleased the King to call : Which that they were altogether distinct from the King's Privy Council, appears plainly by this, that the latter never included all the Judges, nor did the Privy Council ever exercise any Judicial Authority in Parliament, as this Council did in those days ; but that this Council consisted of the Parties above mentioned, see the Statute of *Escheators*, made 29 Edw. I. And in the *Placita Parliamentaria* of that Year, the Statute runs thus : *Per Concilium Regis concordatum est coram Domino Rege ipso consentiente, &c.* But in the *Close Roll* of this Year it is clearly explain'd who were of this Council, their Names being there particularly recited, *viz.* all the Great Officers above mentioned, together with the Judges of the King's Courts, and Justices *Itinerant*, &c. Which is likewise explained by the *Parliament Roll*, 9 Ed. II. *Rex voluit quod Dominus Cancellarius, Thesaurarius, Barones, Scaccarii, Justiciarii, & alii de Consilio Domini Regis London. existente, convenirent.* I could give you many more Examples of this kind, but I shall give you but two more, to prove that this Council in Parliament could not be the King's ordinary Privy Council. The first is in *Placit. Parliament.* 2 Ed. III. in a Cause betwixt *Thomas Fitz-Peter* and *Alienora* Wife of *John de Mowbray*, *coram Rege.* The Record is long, but concludes thus, directed to the Justices : *Et si difficultas aliqua subfuerit, quare præmissa facere non possitis, tunc Placitum illud usque in prox. Parliamentum nostrum adjornetis, ut ibidem tunc inde fieri valeat quod de Consilio nostro fuerit faciendum.*

By which we may very well gather, that this was none of the King's Ordinary or Privy Council, or else to what purpose was this Cause adjourned to the Meeting of the next Parliament ; since, if it had been to have been determined by the Privy Council, it might have been heard forthwith.

I shall give you but one Instance more, out of the *Close Roll* of the 41st of the King, wherein a Cause between *Elizabeth* Wife of *Nicholas D'Audley*, and *James D'Audley*, in a Controversy between them (touching certain Lands contained in the Covenants of her Marriage) is said to have been adjudged *devant son Conseil, c'est a sçavoir, Chancellor, Thresorier, Justices, & autres Sages, assemblez en la Chambre des Etoiles ; i. e.* before his Council, *viz.* the Chancellor, Treasurer, Justices, and other Wise Men, assembled in the Star-Chamber. So that when any thing in our old Statutes is said to be ordained by the King and his Council, it is
always

In Rastal's
& Pulton's
Stat. fol. 52.
83.
Pla. Parl.
29 Edw. I.
fol. 273.
Ro. Claus.
29 Edw. I.
m. 15. verso.
Numb. 9.

Rot. 97.

M. 12. 15.

always to be understood, not as if this Council were a fourth Estate, whose Assent or Advice was necessary to the making of Laws, for then they would have had the same Power still; but only according to the Custom of those Times, when most Acts of Parliament were drawn by them, and that the King pass'd none without their Advice: It was then said to be done by the King and his Council (*viz.* in Parliament) and I conceive the Power of this Council continued till the Beginning of the Reign of *Henry* the seventh, when this Court was by Act of Parliament annexed to that of the Star-Chamber, where also this Council of the King used to meet before (as appears by the Case I have last cited) and had afterwards only to do with Criminal Causes, and that as well out of as in Parliament: And that King *Henry* the seventh not caring to exercise his Judicial Power in private Causes, as his Predecessors had done, or to make use of their Advice either in the drawing or passing of Bills, which now began to be drawn by Committees in either House, wherein those Bills were preferred, this Council came by degrees to grow quite out of use, as it is at this day. I hope you will pardon this long Digression, which I have been drawn into, to rectify a common Mistake of the Gentlemen of your Opinion, who, when they find any thing in our antient Statutes or Records, wherein the King's Council is mentioned, presently entertain strange Fancies of the Antiquity and Authority of the Privy Council.

M. I am so far from thinking this Discourse you have now made to be at all tedious, that I give you many thanks for it, since it gives me a light into many things which I confess I did not know before; and I shall better consider the Authorities you have now given me, and if I find they will hold good, shall come over to your Opinion in that point, tho' I am not as yet satisfied as to the Legislative Power of the two Houses; and therefore pray proceed to answer the rest of the Precedents I have brought on that Subject.

F. I shall readily comply with your Commands; and therefore to come to those Statutes of the 15th and 20th of *Ed. III.* which you suppose to have been repealed by that King without the Consent of the Lords and Commons. I grant indeed, that the Statutes you mention were intended to be repealed by the King, without Assent of Parliament: Yet this was not done by himself and his Council alone, as you suppose; but by a Great Council of Earls and Barons, which the Kings of *England* in those Days were wont to call upon emergent Occasions, and for the doing of that which they thought Parliaments could not, or would not so readily perform; as in this pretended Repeal of the Statute you mention. And tho', I grant, this was a great Breach upon the fundamental Constitutions of the Kingdom, yet that it was done in such a Great Council as I have now mentioned, I refer you to this pretended Statute it self, and to your Recital of it. And that the King often called such Great Councils, appears by an Agreement of Exchange made for the Castle of *Berwick*, between King *Henry IV.* in the fifth Year of his Reign, and the Earl of *Northumberland*; where the King promiseth to deliver to the Earl, Lands and Tenements to the value of the Castle, by these Words (which I shall render out of *French* from the Original which remains in the Tower): *By the Advice and Assent of the Estates of the Realm, and of his Parliament (so that the Parliament happen before the Feast of St. Lucie) otherwise by the Assent of his Great Council, and other Estates of his said Realm, which the King will cause to be assembled before the said Feast, in case the Parliament do not happen, &c.*

And yet notwithstanding this high Strain of Prerogative, neither King *Edw. III.* himself, nor the Parliament, were satisfied with this Repeal of those Statutes you have mentioned; but in the next Parliament, held in his 17th Year, passed a formal and legal Repeal of them, as by the *Parliament Rolls* of that Year, remaining in the Tower, doth plainly appear; and which I could give you at large, did I not fear to be too tedious. But I think it fit to let you know this, because most ordinary Readers seeing no more appear in Print in our Statute Books, are apt to imagine, that the Kings of *England* in those Days did often take upon them, without Authority of Parliament, to make and repeal Laws. But as for your next Instance of the Statute of 20 *Ed. III.* it is much weaker; since, tho' I confess that in the Preface to these Acts there is only mention of the Great Men, or *Grantz* (as it is in our old *French*) and other Wise Men of our Council; yet I shall prove at another time, that under this Word *Grantz* were meant the Lords in Parliament, as by the Wise Men of our Council are understood the Commons. And it

Rot. Parl.
17 *Ed. 3.*
Numl. 23.

Par. 269.
Edit. 1635.

appears by the Writs of Summons and Parliament, of the 20th of *Edward III.* that the Commons were present at this Parliament; therefore it seems most reasonable to interpret the Sense of many ancient Statutes, wherein the King alone is said to make and ordain Laws, by those later or more modern ones, wherein the King by the Consent of the Lords and Commons, or by Authority of Parliament, is said to have ordained them: Since the true Stile and Meaning of ancient Laws, which were penned with the greatest Brevity, ought to be still interpreted by the modern ones, and not the modern ones by the ancient. So that I am of the Learned Mr. *Lambard's* Opinion, who in his *Archaionom*, or Discourse upon the High Courts of Justice in *England*, expressly tells us, "*That whether the Laws are said to be made by the King, and his Wise Men, or by the King and his Council, or his Common Council; or by the King, his Earls, Barons, and other Wise Men, or after such other like Phrases, whereof you meet with many in the Volumes of Parliaments: It comes all to this one Point, namely, That the King, his Nobility and Commons, did ordain and enact the same. And which is more, if you shall find any Acts of Parliament seeming to pass under the Name and Authority of the King only, as there be some that have that shew indeed; yet you must not by and by judge, that it was established without the Assent of the other Estates.*"

Page. 27.

As for the rest of your Insinuations, rather than Arguments against the Antiquity of those Expressions, *Be it enacted by Authority of Parliament*, or, *Be it enacted by the King, Lords and Commons*; which bear so hard upon you, to prove that these last have a share in the Legislative, that they were introduced in the Reigns of *Hen. VI.* and *VII.* two Usurpers, and but in the Nonage of the former; I think I shall be able to shew you, that you are very much out in your account; for there are much ancients Authorities, wherein the same Words, or others equivalent, have been used in our Statutes: And first, pray call to mind the Statute of *Measures* already recited; where it is said, *That by the Consent of the whole Realm of England, the Measure of our Sovereign Lord the King was thus made, &c.* which certainly must mean the Assent of all the Estates assembled in Parliament. And my Lord *Coke* tells us in his 3d *Institutes*, of an ancient Record that he had seen of the 7th of this King, wherein it was said to be *Enacted by the King, the Lords Spiritual, Temporal, and Commons.* But since I have given you Precedents enough of Statutes, which are said to be made or ordained by the King, with the Assent of Lords Spiritual and Temporal, and Commons; I will shew you one where the King is not at all mentioned; and that is in *Rastal's* Statutes, 4 *Hen. 4. cap. 24.* concerning *Aulnage of Clothes*, which runs thus; *Be it ordained and accorded by the said Parliament*, without any mention at all of the King. And to let you see that these fatal Words you except against, were in use before the Reign of *Hen. 6.* pray see 9 *Hen. 5. cap. 4.* concerning the *Misprison of Clerks in writing*, which runs thus; *The King hath now declared, and ordained by Authority of this present Parliament, that the Justices, &c.* which must certainly refer to the Lords and Commons, unless you can make the King alone to be the whole Parliament: Whereas if that Phrase had began from Usurpation, it would have been first found in the Statutes of *Henry the 4th.* But to let you see that *Edward the 4th.* though no Usurper, yet did not think that these Words did abate any thing of his Royal Prerogative, pray see the Statute Book in the 4th of that King, *Cap. 1.* wherein it is recited, *That the King, by the Advice, Assent, Request and Authority of the Lords Spiritual and Temporal, and Commons in Parliament assembled, hath ordained and established: And that by Assent of Parliament, and by Authority of Parliament,* is all one and the same, since the Assent of Parliament makes its Authority: Pray see the express Judgment in this Point of the Lord Chief Justice *Crew* and Justice *Doderidge*, given in the great Case of the Earldom of *Oxford*, reported in Judge *Jones's* Reports.

Page. 104.

To conclude; Though I do not deny His Majesty's Negative Vote to all Acts of Parliament, yet this Prerogative can be concluded only from his giving his last Assent to a Law; for when a Bill begins from himself, the Two Houses have likewise a Negative upon him; which is evident in an Act of *Pardon*, which proceeds originally from the King, and being sent down to the Parliament, though neither the Lords nor Commons can add or alter one tittle to, yet may they notwithstanding his prior Assent, refuse the whole Bill if they please, though already pass'd under the Great Seal. And though I likewise grant, that it is the *Le Roy le Veult*,

Veult, that by yielding the highest and last Assent, gives the enacting Force to the Law; and thus, I grant, the King may in a Logical Sense be said thereby to make the Laws according to that known Maxim, *Quod dat formam, dat esse rei*: Yet this does not hinder but in a legal Sense, according to the exprets Declaration of our old Lawyers, and Acts of Parliament, the Laws owe their Obligation to the joint Consent of King and Parliament; and his giving his last Assent or Form to the Law, no more proves his sole Legislative Power, than it would do that of the Lords or Commons, if either of them by the Constitution of the Government were to give their Assents last thereunto. So that I think upon the whole matter, no Man can reasonably deny but that legally the Two Houses of Parliament have also their share not only in framing, but enacting of all Bills that shall pass; for otherwise they would signify no more than the Committee of Articles in *Scotland*, or the King and Council of *England* in relation to *Ireland*; the former of which draws up all Bills that are to pass in the Parliament of that Kingdom, and the latter must approve or reject all Bills that shall pass in the Parliament of *Ireland*: Whereas the Authority of our Parliament consists in their consenting to, and enacting together with the King all Statutes whatsoever. And this Distinction I think may very well reconcile *Bracton* with *Fortescue*; the former of which says, *Quod Leges ligant suum Latorem* (meaning the King) and the latter (in the place I have already cited) affirms, that the People are governed by those Laws, *quas ipse fert*, which they themselves make: And this I think is to ascribe to the King as much Power as is requisite to a Civil Sovereign, and yet to leave a sufficient share to the People to secure themselves from Tyranny.

M. I must beg your pardon if I cannot be satisfied with your Division of the Legislative Power, between the King and the Two Houses of Parliament, since it is against the Sense of our old Lawyers *Glanville* and *Bracton*, who, as you yourself acknowledge, make the King the Sole Legislator. And though I confess *Fortescue* gives the People a share in it, yet he is but a modern Author in comparison of the other two, and writ to support the usurped Title of *Henry* the Sixth. So that I cannot comprehend how the Two Houses can have any share (properly speaking) in the Legislative Power, without falling into that old Error of making the King one of the Three Estates, and so co-ordinate with the other Two: Whereas if the King be a Monarch, that signifies in *Greek* the Government of one Person, whereas by giving the Two Houses a part in the Legislative, you divide it into three several shares. But indeed there is so close a Conjunction between all the Parts of Sovereign Power, that the one cannot be separated from the other, but it will destroy the Form of the Government, and only set up an irregular Commonwealth in its place, which will scarce be able to hold long together, without falling into perpetual Quarrels and Disputes about the Encroachments upon each other's Power and Privileges.

And it appears as well by the whole Tenor of our Laws, as also by divers express Statutes, that the King is the Sole Supreme, and consequently the Sole Legislative Power: The first of these I shall prove from the common Indictments of Treason, Murder, Felony, &c. Which run always, *Encounter la Corone, & la Dignite de Roy*; and the Process against such Offences are called the *Pleas of the Crown*, because they are against the Crown and Dignity of the King. So that it is not the Dignity and Authority of the Lords and Commons which is violated, but the Dignity and Authority of the King.

In the next place, this Opinion is contrary to the express Declaration of divers of those very Parliaments which you pretend have exercised a share in the Legislative: For you cannot deny, that many of our ancient, as well as modern Statutes, were made and drawn up in the Form of a Petition from the Lords and Commons, or both of them, to the King: And it is very strange, that one Fellow in the Supreme Power should so humbly petition the other. But, 2. though Time hath altered the Form of Petitioning into Bills, yet both Lords and Commons have been often used to call the King, *Our Dread Sovereign, Our Sovereign Lord, Our Lojge Lord*, and the like; and to stile themselves, *We your Majesty's most Humble and Faithful Subjects*, or *most Dutiful and Obedient Subjects*; and in that humble Stile, to beseech him to enact such and such things; which sure they could have done alone, had they been co-ordinate with him in Law-making. Lastly, If they were Copartners with him in the Supreme Power, how came they to declare (as they did in the Preamble

to

to the Statute of the 25th of *Henry VIII.* which you yourself have quoted) *that the Realm of England is an Empire, governed by one Supreme Head and King, unto whom the Body Politick of the Nation, compacted of several Sorts and Degrees of People, divided in Terms of Temporality and Spirituality, owe and bear, next unto God, a Natural and Humble Obedience?* Now how came they here farther to declare this Supreme Head of the Clergy and Laity, to be furnished with Plenary, *Whole and entire Power by the Goodness and Sufferance of Almighty God?* Certainly they can have no share in it if it be plenary, wholly and entirely in him: Or how came they in the 1st Statute of *Queen Eliz. c. 7.* (being a Recognition of the Queen's Supremacy) to acknowledge, that all Power, Temporal and Spiritual, was deducted from her, as the Supreme Head, and *that they were her most Faithful and Obedient Subjects*; and that though they did in Parliament represent the Three Estates of this Realm, yet that *She was the only Supreme Governor thereof*: Which was pursuant to a Statute to the same purpose, in the 2d of *Edw. VI. c. 2.* wherein it is declared, *That all Authority of Jurisdiction, Spiritual and Temporal, is divided and deducted from the King's Majesty, as Supreme Head of these Churches and Realms.* Not to mention the Oath of Supremacy itself, *That the King or Queen's Highness is the only Supreme Governor of this Realm*: Which these Statutes would never have acknowledged, had it not been consonant to our ancient Common Law; by which it is expressly declared in that old Law Book, (written as it is supposed by Bishop *Bretton*) in the very first Leaf thereof, in the Name of King *Edw. I.* himself; *We will, that our Jurisdiction be above all other Jurisdications*; which had been spoken in vain, if all other Powers had not been derived from, and so subordinate to, the King's. Besides, I could prove this farther from History and Matter of Fact.

F. I thank you, Sir, and I desire I may answer what you have now said, before you pass to another Head; for I doubt the time will not give us leave to discourse much further on this Subject to Night. In the first place therefore, I must tell you, that the main Foundation of your last Arguments is founded upon a Supposition which I altogether disown, *viz.* Co-ordination or Division of the Sovereign Power between the King, and the Two Houses: For I have always supposed, that the King continues still Supreme, and that (as the *Modus tenendi Parliamentum* declares) He is *Principium, Caput & Finis Parliamenti*; that is, he can call and dissolve Parliaments when he pleases; and likewise, that the Executive Part of the Government rests solely in him, as also the Power of making War and Peace: And even in the Legislative itself, that the King hath more eminently (though together with the Parliament) a Supreme Enacting Power, without which it cannot be a Law. All this being consider'd, you will find that here is no Division of the Legislative Power; since neither the King, nor the Two Houses, have it solely and compleatly in themselves; but it is jointly executed by them all Three, as one entire Politick Body or Person. So that neither can they make any Law without him, nor he enact any without their Consent; and he, by giving his Consent last, gives it the Force and Sanction of a Law, and he is therein the Supreme, *i. e.* the last or ultimate Power, (in the true Sense of that Word) nay, the only Supreme Power, unless you could suppose two Supremes, that is, two Highest Powers at once in the same Kingdom: But that for all this, the Two Houses are not subject to the King in Matters relating to Legislature, may farther appear, in that the King cannot command them to give him what Money, or to pass what Laws he pleases: Since if he should go about to do so, they might (as I suppose you yourself will grant) lawfully disobey him; which they could not do without apparent Disloyalty, and high Disobedience, were they in this, as they are in other things, relating to the Peace and Defence of the Kingdom, subject to his Commands, when legally issued.

But to return you a more particular Answer to what you have said, to prove the King to have the sole Legislative Power: As to what you pretended I have quoted out of *Glanville*, if you please better to consider of it, you will not find that he gives the King any more than an enacting Power, together with his Great Council: For though he tells us, *Quod Principi placet, Legis habet Vigorem*; yet mark what follows, *eas scilicet quas super dubiis in consilio definiendis Procerum quidem consilio, & Principis antecedente Autoritate constat esse promulgatas.* Where, by the last *consilio*, is meant somewhat more than meer Advice, as I have already proved. But as for
Bracton,

Baron, though he agrees with *Glanville* in making the King's Authority necessary to the Essence of a Law: Yet he is more express than the other in making the Advice and Consent of the Great Council, or Commonwealth, also necessary to its being, as you may remember by these Words; *Cum Legis vigorem habuit, quicquid de Consilio & de consensu Magnatum, & Reipublicæ communis Spensione, Autoritate Principis præcedente, iuste fuerit definitum.*

But further, to let you see how much you are out in your Argument, whereby you would prove from the Form of our Indictments of Treason, &c. That the King hath the Sole Legislative Power of the Kingdom; I shall shew you, that all our ancient Laws, as well Common as Statute, do declare the contrary: Since divers Acts of Parliament have expressly affirmed, that such and such Offences were Treason, not only against the King, but against the King and the whole Realm too: Pray take these Instances; see the Statute 1 *Edw. 3. c. 1.* Wherein *Hugh de Spenser*, both the Father and Son, are by the King and Parliament declared Traitors and Enemies of the King, and of his Realm: See likewise 28 *Hen. 8. c. 7.* Wherein the Crown is settled by Act of Parliament on the Heirs of his Body, begotten on *Queen Jane*, or by any other after Marriage; and that the Offenders that shall interrupt such Heirs in their peaceable Succession, they, with their Abettors, Maintainers, &c. shall be declared and adjudged High Traitors to the Realm. And therefore divers ancient Indictments in *Stanford's Pleas of the Crown*, are laid *contra pacem Regis & Regni.* And that the Parliament hath reserved to itself a Power by the Statute of the 25th of *Edw. 3.* to determine what Crime shall be adjudged Treason, besides conspiring to kill the King, and those other Offences specified in the same Statute, you may consult the Statute at large. But that these Offences can be no other than an Endeavour to alter the Government, or Fundamental Laws of the Kingdom, I think is evident, since all Offences relating to the Lives, or Honour of the King, Queen, and their eldest Son, are there particularly specified; and it was by Vertue of this Statute, that the late unfortunate Earl of *Strafford* was first impeached by the Commons, and afterwards attainted by Act of Parliament in the Year 1641. but whether justly or not, it is not my Business now to determine: It is sufficient that it was then granted by the King himself; that if the Earl had been really guilty of Destroying the Government, and Introducing an Arbitrary Power, he might have been deservedly condemned.

But that the Power of Making and Dispensing with Laws, is particularly apply'd not only to the King, but to the Lords Spiritual, Temporal, and Commons; pray remember the Preamble of the Statute I have already cited of the 25th of *Hen. 8. c. 21.* wherein it is so expressly declared, as also by the 24th of this King, *chap. 12.* the Preface of which Statute runs thus: "And whereas the King's most Noble Progenitors, and the Nobility and Commons of the said Realm, at divers and sundry Parliaments, as well in the Time of King *Edward 1st. Edward 3d. Richard 2d. Henry 4th. &c.* made sundry Ordinances, Laws, Statutes and Provisions, for the entire and sure Conservation of the Prerogatives, Liberties and Preheminences of the said Imperial Crown of this Realm, &c." Where pray note, that the making of all these Statutes, is ascribed to the Lords and Commons, as well as to the King: Which is also farther acknowledged by the said King *Henry*, when in a set Speech to the Parliament, reported by *Crompton* (in the Case of Errors) he said these Words; "We being informed by our Judges, that We at no time stand so highly in our Estate Royal, as in the time of Parliament, wherein, We as Head, and you as Members, are conjoined and knit together into one Body Politick." And sure then, if the King's Simile be true, whatsoever Functions are performed by the whole Body, must be done by the Members as well as by the Head. I shall sum up all I have said into this Syllogism, That Power which cannot make or enact any new Law without the Advice and Consent of two other Bodies, is not the Sole Legislative Power: But the King is that Power which cannot, &c. Ergo, The King is not the Sole Legislative Power.

M. I shall not longer dispute this Question with you, since I own the Two Houses have claimed, for some Ages past, a share in the Legislative, though in a large and improper Sense, as you yourself do partly grant: And though for the more just and equal Course, our Kings have for a long time admitted the Three Estates, viz. the Lords Spiritual, Temporal, and Commons, into a seeming share of the Legislative

gislative Power : Yet this was not by Constraint, nor by any Fundamental Constitution of the Government, as you suppose ; but only from their own meer Grace and Favour, to make Laws by the Consent of the whole Realm, because that no one part thereof should have any cause to complain of Partiality : And though I grant the King is bound to observe these Laws when made, by virtue of his Coronation-Oath, so as that he cannot alter them without their Consent ; yet is he still above the Law, by virtue of his absolute Monarchical Power, and is not subordinate to it, or so bound by it as to be responsible to the People for any Breach committed by him upon it ; for that were derogatory to the Sovereign Power, and inconsistent with the Nature of Monarchy, and were to set up the Law (which is but a Creature of the Prince's making) above his Sovereign Authority : And this would make our Monarchy a kind of Government which would neither be Monarchical, nor yet a Republick, but some mungrel thing made up of both. So that I take the Notion of a Mix'd Monarchy, to be a Contradiction *in adjecto* : A Limited Monarchy, I confess, there may be, either by the Monarch's own voluntary Grant or Consent, as in this Kingdom ; or else on Conditions imposed upon a Prince by others, either by a Foreign Power, as in Tributary and Feudatory Kingdoms ; or else by the Natives of the same Country, as in some Elective Kingdoms and Principalities : But then such Limitations of Monarchical Power represent a Prince as it were fetter'd, and who cannot act as he would, and ought, for the Advantage and Welfare of his People, if he had his Liberty, and the full Exercise of his Sovereign Power : And therefore in most Governments limited after this manner, the Sovereignty still remains in the Senate or People that elected the King : Which makes me think it a Solecism in Politicks to affirm, that a Monarch (properly so called, and still continuing so) could be thus limited by Laws, or Fundamental Constitutions, as you call them at the first Institution of the Government : For if he were thus limited, that Power that could thus limit him, must be either Superior or Inferior to him. Superior it could not be, because the People that could put those Conditions or Limitations upon him, could not be his Superiors in the State of Nature, before they made him King ; neither could they be his Inferiors, because an Inferior Power can never limit a Superior : And since all our Laws, (as well as the Oath of Allegiance and Supremacy, we take to the King) do own him to be the Sole Supreme Governor of this Realm, I cannot understand how this Limitation *ab extra*, can consist with the King's Supremacy ; for if he be thus limited and restrained, how is he Supreme ? and if restrained by some Law, is not the Power of that Law, and of them that made that Law, above his Supreme Power ? And if by the Direction of such Law only he must govern, where is his Supreme Power ? So that then the Law must rule and govern the Monarch as a Superior, and not the Monarch the Law ; and he hath at best but a Gubernative and Executive Power.

Lastly ; If this Power of the Prince were limited at the Original Constitution, there must be a Power appointed in some Council or Senate (call it a *Parliament*, or *Assembly* of the States, or by what Name you please) whose business it must be to see them exactly kept and performed : Now these Men must either have a Power barely of advising the Monarch, and persuading him to observe these Fundamental Limitations ; or else they must also have a Power of forcing or compelling him, if he will not hearken to their Advice and Remonstrances : If they have no more than the former Power, that you'll say signifies little, since the King may refuse to hearken to them if he pleases, and may do what he will notwithstanding ; but if they have also a Coercive Power over him, and may resist or punish him for his Transgressions, he will then cease to be a Monarch ; since he cannot be so, who is accountable to any Power, either equal or superior to himself : And this our late Parliaments have been well aware of, when they renounced all Coercive Power over the Person of the King, and any Right of making War, either Offensive or Defensive, against him : So that besides the History of Matter of Fact, which I can further give you, to prove our Kings to have been at first absolute Monarchs ; I think the very *Hypothesis* of a Mix'd, or Limited Monarchy, labours under such insuperable Difficulties and Absurdities, that I cannot conceive how those Limitations by which we find the King's Prerogative now restrained, could ever proceed from any higher Cause than the free Grants and Concessions of the King's Predecessors, confirmed by his own Coronation-Oath :

Which

Which though I acknowledge he is bound to observe, and that if he breaks it, he commits a great Sin against God; yet it is only he that must punish him for so doing, since the Oath is not made to the People, but to God alone.

F. Notwithstanding what you have now said, I hope I am able to shew you, that all your Arguments against a Mix'd, or Limited Monarchy, are more subtle than true. For as to your first Argument from the Word *Monarch*, I grant indeed, that strictly speaking, the Word *Monarch* and *Monarchy* signify a single Ruler, and the Government of one alone: Yet in common Acceptation, or according to the Laws and Constitutions of several other Kingdoms, besides *England*, as in the *Empire*, in *Denmark*, and *Sweden*, the Emperor, and those Kings, have been called *Monarchs*, and those Kingdoms *Monarchies*: And though by the Original Constitution of those Governments, those Princes have not been invested with a pure Imperial Authority, such as that of the *Roman* Emperors of old; yet since they had the Executive and Gubernative Part of the Government committed to them, and that they were look'd upon as the Heads of those Kingdoms, and that the Government did therein partake more of Monarchy than of any other Form, those Princes have been always called *Monarchs*, notwithstanding there was a very great Mixture of *Aristocracy* in the Empire, and in *Denmark*, and both of *Aristocracy* and *Democracy* in *Sweden*. The like may be said of *England*, *France*, and those Kingdoms in *Spain*, that were instituted by the *Goths* and *Vandals*, the *Franks* and *Saxons*, after the ancient *Gothic* Model of Government. And though I grant this sort of mix'd Monarchy is not to be reduced to any of the three distinct Kinds of Government laid down by *Aristotle*, yet are they not for all that to be condemned; but rather the more approved of, since by this Mixture they were capable of divers Benefits, and free from several Mischiefs, which are incident to any of those Forms of Monarchy, Aristocracy, or Democracy, when exercised purely and without any such Mixture: And that this, as to *England* itself, is no Invention of the Commonwealth-Men, (as you call them) you may read King *Charles* the First's Answer to the 19 Propositions sent him by the Parliament, for the Words are remarkable: *This Kingdom*, says he, *is mix'd of Monarchical, Aristocratical, and Democratical Government; and that so wisely, that we have all the Conveniencies, and none of the Inconveniencies of any of those Forms taken single.*

Fig. 96.

Nor doth this at all derogate from the Nature of the Monarchy, nor make any Division between the necessary Functions of Sovereign Power: For I have already granted, that the Executive or Gubernative Part is wholly in him, as also the Power of making War and Peace. And as for the Legislative, as long as the King hath a Negative Vote in all Laws that pass, and that they cannot be made without his Royal Sanction, the Legislative Power is not divided, as I have already proved.

But as for your other Argument against a Prince's being limited by the Original Constitution of Government, though as I yield it is more subtle, so it is also more sophistical and fallacious than the former. For your *Dilemma*, by which you would prove the Absurdity of that Notion, will not do; because a Prince, at the Institution of the Government, may be limited by those who are neither superior, nor inferior to himself; but only equal in the State of Nature, as I suppose the People to be with the King before he was made so by them: And that Equals may thus limit each other, you yourself will not (I suppose) deny in the Case of Princes, who are Equals in the State of Nature: As Queen *Mary* (for Example) made such Conditions with King *Philip* of *Spain*, before she married him, that if he offered to meddle with the Government of this Kingdom without her Consent, it would be lawful for her to part herself from him, and to send him Home into his own Kingdom: And might she not with a safe Conscience have done so upon the Breach of the Conditions on his side? Apply this to the People in the State of Nature, and the Person they are about to make King before the Politick Marriage of a Coronation or Admission to the Crown, and see if they do not agree; or whether the People can be blam'd, if they repudiate their Politick Husband for invading that part of the Government which they had reserved to

themselves? Nor doth this argue any more Superiority in the People over the King in the State of Nature, than it doth for a Creditor, in the like State, to compel by Force his Debtor to pay him a Sum of Money which he owed him, in case there were no Civil Jurisdiction for him to appeal to. And let us farther suppose a Council or Parliament appointed, who may remonstrate to the King his Transgressions or Violations of the Law: Yet this may be without any Coercive Power over his Person, or of making War upon him; since the King may, if he please, remedy all these Disorders, by redressing their Grievances, and punishing the Authors of them: So if he will wilfully persist in such Violations as strike at the Fundamental Constitution of the Government, and do also go about to execute them upon the People by Force, this being in effect a making War upon them; I suppose they have then a just Right to defend themselves against his Tyranny. So that if these Rights or Privileges we now enjoy, were not the meer Concessions of the King's Grace and Favour, as you affirm, but reserved as part of their Birth-right at the Original Constitution of the Government, (as I shall prove all our Fundamental Laws were) the People have then as much Right to defend them (their Allegiance to him being upon that Condition, either express'd or imply'd) as any other Nation hath to defend their Lives, Liberties and Properties, against the Violence of the Supreme Powers, or any commissioned by them, as I hope I have already proved to you: So that notwithstanding all that you have said to the contrary, I think the Notion of a Mix'd or Limited Monarchy in the very Institution, may be agreeable to Reason, and practicable too either in this or any other Kingdom: And when you can prove the contrary by History, or Matter of Fact, as you promise, I will give up the Cause.

M. You have broached a parcel of special Commonwealth Notions, in which you are every way out: As first, in making the King's Authority derived either from, or by, the People's Consent: Whereas all our ancient Lawyers call him God's Vicar, or Lieutenant on Earth, and not the People's: And in the next place, in supposing he may be resisted by Force of Arms, whenever the People shall think themselves oppress'd, or their Fundamental Rights and Liberties (as you call them) invaded; it is contrary to the express Declaration of the Parliament, by two several Statutes in the 2d Year of the late King *Charles*: And tho' you disclaim all Coercive Power of the Two Houses over the King, yet it is only to place this Right of Resistance in a more fallible and ungovernable Body, *viz.* the whole People in their natural Capacities; which as it is more consistent with your Principles, so it is more dangerous to all Supreme Powers, as well Commonwealths as Monarchies, as I have partly shewed you already; and, I hope, may farther convince you before I have done. But since I have not now time to shew you the Falsity and Absurdity of these Notions, and to urge the Statute at large against Resistance *in any Case whatsoever*; I pray go on in the Method you have proposed, and let me see how you can make out, that even our Parliaments do not derive that Privilege they now enjoy of giving their Consent to Laws, as also their very Being, to the gracious Concessions of our former Monarchs.

E. That I shall do with all my Heart: But first let me tell you, that though I own the King to be God's Lieutenant in these his Dominions; yet I must likewise aver, that it was only by the Consent and voluntary Submission of the People of this Nation, that the first Monarch (begin where you will) could obtain that Title. And as for those Statutes you mention against all Resistance *in any Case whatsoever*, I doubt not but to shew you, that it was never the Intent of that Parliament to debar us from all necessary Resistance and Self-defence, in Cases of illegal Violence, and intollerable Oppression; unless you can suppose they were resolved to alter the Government, and to put it into the King's Power to destroy all our Laws and Liberties; and instead of a lawful King, to set up for a lawless Tyrant whenever he pleased.

But to come to the Matter in hand, I shall shew you, that it is not at all impossible or improbable, that without any Hinderance of that Power which is necessary

fary to the King as Supreme, that he might for all that have been limited as to the Legislative at the first Institution of the Government, which I shall thus make out.

I do therefore in the first place suppose, that the *English Saxons* being a free People, after their Conquest of this Island, as well Nobles as Commons, did agree by their free Consents, and publick Compacts, to set over themselves a *Prince or Sovereign*, and to resign up themselves to him, to be governed by such and such Fundamental Laws. Here is a Supremacy of Power set up, tho' limited as to the manner of its Exercise.

2. Then because in all Governments after Cases will arise, requiring an Addition of Laws, suppose them *covenanting* with their *Sovereign*, that if there be any Cause to constitute any *new Laws*, he shall not by his sole Power perform that Work ; but that they will reserve in themselves a *concurrent or co-operative Power* : So that they will be bound by no Laws, but what they join with him in the making of.

3. I suppose, that tho' the Nobles may personally convene ; yet since the Commons being so numerous, cannot meet together in Person ; therefore, for the doing of this Work, it be agreed, that every City or considerable Town should have Power to depute one, or more, to act for the whole Body in the Legislature. That the Nobles by themselves in Person, and the Commons by their Deputies assembling there, may be representatively the *whole Body* of the Kingdom, with Power to execute that Authority reserved for establishing new Laws.

4. Since the occasion, and need of making such Laws, and expounding the old ones, could not be constant and perpetual ; therefore we may farther suppose, for the avoiding of the Inconvenience of three standing *co-ordinate Powers*, they did not establish these *Estates* to be constantly existent, but occasionally, as the Causes for which they were ordained should require.

5. Because a Monarchy was intended, and therefore a Supremacy of Power (as far as was necessary) must be reserved in one, it was concluded, that these Estates should be still *Assemblies of his Subjects*, and swearing Allegiance to him ; and that all *new Laws*, which by Agreement of these Powers should be enacted, should run in his *Name*, and be called his *Laws*, and they all bound to *obey* him in them, when thus establish'd.

6. And lastly, it being supposed, that he who thus was to govern by Law, and for the *Furtherance* of whose Government such *new Laws* were to be made, should best understand when there was need of them ; and that the convening and dissolving of the Assembly of the *Estates*, was a *Power of great Trust* ; it was put into the Prince's Hands, by Writ to *Convoke*, as also to *Prorogue* or *Dissolve* such Meetings. But in process of Time, some Princes, not caring much to have their Government look'd into, or to have any Power in being but their own, taking Advantage of this Power of assembling these Estates, did, more seldom than need required, make use of it : Whereupon Provision was made, and a Time set by *new Statutes*, within which an Assembly of Parliament was to be held. Now when you have made these true Suppositions in your Mind, you have the very Model and History of this Monarchy ; and we shall easily find what to answer to the Arguments before produced on either side. For first, it is his Parliament ; because an *Assembly* of his Subjects convoked by his Writ to be his Council, and to assist him in making Laws for him to govern by ; yet not his, as other Courts are, as deriving their whole Authority from the King. So likewise his Power of assembling and dissolving them, proves him thus far above them ; because, though as to the Time of their Meeting, it depends on him ; yet their Power and Authority, *quoad Specificationem*, i. e. the Being, Kind, and Exercise of it, is from the Original Constitution. For as to that, they expect no Commission and Authority from him, but only to their Meeting, to proceed

to act; but when met, they act according to the Original Rights of their Constitution; and those Acts proceed from their conjunct Authority with, not from their Subordination to the King in the Legislative; as also in laying of Taxes, &c. on the People.

The *Oath of Allegiance* indeed binds them, as his Subjects, to obey him, governing according to establish'd Laws: But yet it supposes them to be built upon the Foundations of his legal Government, and must not be interpreted to undermine and destroy it. He is hereby acknowledged to be Supreme, so far as to rule them by Laws already made, or to be made, but not without them. So that this is no Derogation to the Legislative Power of Parliament: And I believe of these things no unprejudic'd Man can make any question. And herein consists the accurate Judgment of the *Contrivers* of this Form, that they have given so much into the Hands of the *Sovereign*, as to make him a Monarch; yet have reserved so much in the Hands of the *People*, as to enable them to preserve their *Laws* and *Liberties*.

M. I confess you have given a long and plausible Account of the Original and Form of our Government, though if it come to be examined, I doubt it will prove a *meer Romance*, and not at all agreeable to true History, or Matter of Fact: Since if we look to the *eldest Times*, either after the *Saxon* or *Norman* Conquests, we shall find the Power of our Kings to have been still more absolute than they are now. And I think I could easily trace the Steps by which the People have attained to all the Power and Privileges they now enjoy; which, as I do not grudge the Nobility and People of this Nation, yet they ought to exercise it with a due *Respect* and *Subordination* to that Power from which they were all at first derived; lest if they should ascribe them to themselves, the King should be tempted to destroy those *great Privileges*, and taking away the very Being of Parliaments, to make Laws without them.

But to shew you farther, that this Notion of an independant Power in the *two Houses* by the *Original Constitution* of the Government, is altogether inconsistent with the King's Prerogative, appears from clear Matter of Fact, even as you yourself have put it. For when Kings thought fit not to have their Power controuled, you acknowledge they called Parliaments less frequently than usual; and that thereupon there were divers Laws made, appointing certain times for their Meeting; from whence it appears, that before this the times of their Meeting were wholly left to his Discretion. Nay farther, that the King's Prerogative of assembling them, or omitting it when he pleases, cannot be limited by any Act himself can make, appears from hence, that notwithstanding all those Laws that have been made for Annual and Triennial Parliaments, our Kings have never thought themselves obliged to call Parliaments oftner than they saw their own Occasions, or the Necessities of the People (which they themselves were sole Judges of) required. Nor did any Parliaments ever find Fault with this, 'till that *rebellious one* in 1641, which had the Confidence to present to the King a Bill to be pass'd, whereby it was not only enacted, that there should be a Parliament every third Year; but that upon the King's omitting to issue forth Writs of Summons, the Sheriffs, nay Constables might summon the Freeholders, and proceed to Election; and that the Lords might also meet without any Writs from the King; which was quite contrary to the Original Constitution, by which (as you yourself grant) there could be no Parliaments without his Summons; he being *Principium, Caput & Finis Parliamenti*. And if so, it seems wholly improbable, nay impossible to me, that your *Two Houses* should have, by the *Original Constitution*, any Power of meeting or doing any thing without his Majesty's Consent and Allowance: And we know that at this Day, the *Speaker*, in the Name of the *House of Commons*, desires of the King, *Liberty of Speech*. And King Henry VIII. and Queen Elizabeth did sometimes rebuke the *House of Commons*, and sent to them to *desist*, when they were about to pass any Bill they did not approve of, or to meddle with those things which did not belong to them: Which plainly declares, that (contrary to your Assertion) neither of the *Two Houses* have any Power to proceed upon any Business, or to pass any Bill which the King

King disapproves of. And though I grant that they do not ask the King's Leave for the bringing in, or passing of all Bills whatsoever in either House; or that the King can command them to give him what Money, or pass what Bills he pleases; yet this Privilege must needs proceed from his Grant or Concession: Whereby, though he hath discharged them from an active Obedience to such Commands, yet hath he not thereby divested himself of any of the essential Rights of Sovereignty, or at all discharged them from a Passive Obedience, or Submission to his Power, supposing the worst that can happen, that he should take away what share he pleased of the Subjects Estates without their Consent; or make his own Edicts and Proclamations to be observed for Laws: Since the King's Authority is prior to all others, and that (as the Statutes of Edward VI. and Queen Elizabeth, which I have already quoted, expressly declare,) *All Power, Authority and Jurisdiction, Spiritual and Temporal, is derived wholly from the King*: So that unless your Legislative Power of Parliament be somewhat, that is, neither an *Authority* nor a *Jurisdiction*, it is by this very Body acknowledged to be wholly derived from him: Nor have you yet answered this Argument, nor I believe can you do it.

F. As for your History which you promise to give me, of the absolute Power of our first Saxon and Norman Kings, I desire you to defer the speaking of it till another time, it being now late: Yet I do not doubt but to prove, that what I assert concerning the *limited Power* of our Kings, even by the Original Constitution of the Government, is no Romance, but true History. Nor are the Reasons that you have now urged to the contrary prevalent enough with me to alter my Opinion: For I think I am able to prove somewhat more than I but now asserted, *viz.* that the *Wittena Gemote*, or *Great Council*, met constantly once a Year, or oftner, when Occasion was, under the Saxon Kings, without any Summons from them; as when we come to the particular History of this Matter, I shall shew you more at large. And also, that for the first hundred Years, after the Coming in of the Normans, the Great Council, or Parliament, used to meet of course at the King's Court, at two or three of the great Feasts of the Year, without any other Notice by Writ or Summons. The first mention we find of such Writs, being in King John's *Magna Charta*: But that when these Assemblies became less frequent, by reason of the King's discontinuing of them; and because of the Ease the Nobility and People found, in being discharged from so constant and chargeable an Attendance, they came to be so discontinued at last, that, as you yourself confess, there were fain to be express Laws made for their more frequent Meetings: And though the Power of summoning them, was still left wholly in the King; and that he did very often dispense with the Calling them, according to the intent of those Statutes; yet doth not this prove any legal Prerogative in him so to do; but that it was a high Breach of Trust, and also of his Coronation Oath, when he thus omitted to call them: Since our Kings were formerly sworn to keep, and observe those Laws, *quos vulgus elegerit*, which the People either have, or should chuse, con-
 true it which way you will; though I own in French it is in the *Preterit*, *auera*
eleu, should have chosen. And as it is an old Maxim *a Facto ad Jus non valet con-*
sequencia, so it is no true way of Proof, to argue from an illegal Exercise, or Abuse of Power, to a legal Right of Prerogative. And though the Parliament might not always actually question, or find Fault with their Kings for thus neglecting to call them; because, perhaps the Publick sustained no present Damage from it; and that they thereby escaped the giving the King those Taxes and Aids which he usually demanded of them at such times: Yet when the long Forbearance or Omissions of Parliaments became a general Grievance, by reason of those Encroachments that the King and great Men often made upon the People's Liberties in those Intervals; and that the King look'd upon it as a piece of his Prerogative to abuse this Trust as far as he pleased: Then (and not till then) there was need of a Law, that there should be a Parliament every Year; and that in case of any Failure of Summons on the King's part, the People might proceed to Election without it, which was not so properly a new Law, as the Restoration of the old Constitution; since anciently the People met the
 King

Rot. Claus. 1.
 E. 2. m. 10.
 pars Ultima.

Vid. Walsingham & Mat. Westm. in the beginning of this King's Reign. Vid. Hen. of Hunt. and Ro. Hoveden.

King at these great Councils, at such set Times of the Year, as I shall prove, when we come to the History of Matter of Fact, which I am not at all afraid to be judged by. And then also, I shall shew you, that tho' the King is now *Principium, Caput & Finis Parliamenti*, (that is, the Parliament properly so called) yet that the great Council, or Assembly of the Estates, had, from the first Institution of the Government, a Power of assembling themselves, in cases of Necessity, such as are doubtful or disputed Titles to the Crown, or the Absence of the Successor; and then they have often met by their own inherent Authority; and have either settled the Succession of the Crown, as they thought good; or else have recognized an *Hereditary Right* in the Absence of the Heir; as when King Edward the first was in his return from the Holy Land: Or else to depose the King's Justiciary, when he abused his Power, as in the Case of *William Longchamp*, Bishop of Ely, who was left Vice-Roy by King Richard the first, when he went into the Holy Land.

And though I own that some high-spirited, and yet well-beloved Princes, might take upon them a Power of rebuking the House of Commons when they meddled with Business they did not like: Yet this Submission proceeded from the great Reverence they had for their Persons, and Confidence they placed in their Government. Since we find only those Princes that were wise and successful in their Government, and so became the Darlings of their People, such as Queen Elizabeth and King Edward the Third, (for as for King Henry the Eighth, I remember no Instance of it) who durst venture to act thus. As for the desire of *Freedom of Speech*, it is but a Compliment; for how can the Grievances of the Kingdom be redressed without speaking freely of them? And if one great End of Parliament was to redress these Grievances, it were altogether in vain for them to attempt any thing in this kind, if the King could browbeat them from it, whenever he pleased. But *Bracton* doth not only tell us, *Rex habet superiorem, Legem, & Curiam suam Baronum, &c.* in the place I have already cited: But the old Book, called *The Mirrour of Justices*, also teaches us the same Lesson in his second Section, where, speaking of the King's Power, he tells us, *That though the King can have no Peer in the Land, yet nevertheless, if by his own Wrong he offends against any of his People, none of those that judge for him can be both Judge and Party.* It is therefore agreeable to Right, that the King should have Companions to hear and determine in Parliament, all Writs and Complaints concerning the Wrongs of the King, Queen, and their Children; and of them especially whose Wrongs could not otherwise have common Right. These Companions are therefore called *Counts*, after the *Latin Comites, &c.* Nor can I think that any King would have erected a Court to have redressed the Wrongs done by himself, or his Family, whether he would or not. But as for your main Argument, from the Words of the Statutes of King Edward VI. and Queen Elizabeth, *That all Authority and Jurisdiction, as well Spiritual as Temporal, is derived from the King*; I do own it true; that is, if meant of all derivative Authority, such as that of all inferior Courts, as well Civil as Ecclesiastical. For I suppose you yourself will not affirm, that the Ecclesiastical Authority of Bishops, as to their Right of meeting in publick Synods or Councils, is derived from the Crown. But the Truth is, the Sense of this Statute is no more, than that all such Jurisdiction is immediately derived from the King, though originally from the People, (which *Fortescue* calls *Potestatem a Populo effluxiam*), and by them intrusted with him, as the Supreme Magistrate, to distribute it to all inferior Courts, which yet he cannot at this Day create anew without an Act of Parliament: So that this will not extend to the whole Assembly of the Estates themselves; since I doubt not but to prove, by undeniable Testimony, that that Constitution is as antient as the English Nation itself.

M. I see you have a mind to wrest the true Sense of this Statute by a forced Interpretation; but I hope at our next Meeting to prove to you, that our first Saxon and Norman Kings were absolute Monarchs; and that not only all the Liberties and Privileges we enjoy, but also our Civil Properties were wholly derived from them: And if so, it will also necessarily follow, that all Difference and Distinc-

Distinction in Honour or Power, by which the Bishops and Temporal Lords can claim to sit in Parliament, is wholly derived from those Kings. For as to the Commons, I need not go so high for their Original; since it is the Opinion of our best Antiquaries; and I think the learned Dr. Brady hath sufficiently proved it against Mr. Petyt, that they are *no antienter* than the latter End of Henry the Third's, or perhaps the 18th of Edward the First's Reign. Nor do the Authors you have quoted for the independant Authority of Parliaments, (*viz.* *Bracton* and the *Mirrou*) mention any other than the *Curia Baronum*, or that of Earls and Barons, as the Author of the *Mirrou* hath worded it; by which can be meant no other than the House of Lords: For as to that of the Commons, had they been then in being, or had they had any thing to do in the Government, it is not likely these antient Authors, as well as our Acts of Parliament of those Times, would have omitted particularly to mention them. So that the higher I go, and the more I look on the History of our antient *English* Kings, the more absolute I find their Power, and the less dependant upon the People. Therefore I have very great reason to believe, that our first Kings were absolute Monarchs, not only by the Original Constitution of Parliaments, but also that our very Liberties and Properties proceeded at first from their meer Grace and Favour.

F. I know you have asserted the same things more than once: All the Difficulty lies in the Proof. And therefore I would not have you be too positive, or rely too much upon the Conciseness or Silence of the antient monkish Writers of those first Times. For since, as I own, they have never given us any exact Account of our antient Civil Government, nor yet of the History of their own Times; we are forced, for the most part, to pick out the Truth from other Circumstances, or such Passages as we can meet withal in antient Laws and Customs; nay, sometimes from those of their Neighbours, who lived under the same kind of Government and Laws with our *Saxon* Ancestors, as proceeding from one common Stock or Original; as I shall shew you before we have done. But since we are already in Possession of our antient Laws and Liberties, and of a Right to Parliaments once every Year, or oftner if need be, by two antient Statutes yet in force, at farthest once every three Years, by a late Act of Parliament, it ought to be your Task to prove to me the absolute Power of our first *English* Monarchs; and by what Steps and Degrees they came to part with their Power, and to be thus limited as we now find them; and when you can shew me this, I do assure you I will come over to your Opinion.

M. I shall observe the Method you prescribe. And therefore, to begin with the first Entrance of the *English Saxons* into this Island; I suppose you are not ignorant of so common a Piece of History, that all the Title they had to this Island was by the *Sword* or *Conquest* of their first Princes or Generals, who being sent by *Lot*, together with the Armies that followed them out of their own Country, because it was too narrow or barren to sustain such great Multitudes, they came over hither to seek new Dwellings. Now whether these Princes were made Kings before they came over, or that they made themselves so immediately after their Conquest, will be all one; since if we consider them as Military Captains or Leaders of Armies, their Power was absolute, as that of all Generals ever was, and must be by the necessary Laws of Military Discipline. If we look upon them as Kings or Princes (as it is very likely they were also before they came over) since they were certainly of the *Blood Royal*; all of them deriving their Pedegree from *Woden* their God, as well as first King; and being appointed Kings by their Fathers, or other near Relations, over those Parties or Colonies they were to lead out and command, there is no Ground to believe they owed their Titles to the Votes or Suffrages of their Followers. But after they had settled a Heptarchy, or Seven Kingdoms, in this part of *Britain* called *England*, we find them governing, and leading their People like absolute Kings and Monarchs over their little Principalities: And since each Kingdom was conquered from the *Britains* under their Conduct, according to the

Laws

Laws of Nations, and Right of Conquest, all the Lands of each Kingdom belonged to the Conquerors ; who, though they cantoned them out into Shares to their Captains and Soldiers, according to each Man's Valour or Desert, yet did this wholly proceed from their Bounty and Favour, who might have kept the Whole to themselves, if they had pleased. And hence it is, that not only since the *Norman* Conquest, but also long before, all the Lands of *England* were holden of the King, as the Supreme Lord : And if so, I suppose you will not deny, but that according to your own Principle, all our other Privileges and Liberties must have been derived from him ; since you have already asserted, that whoever is *Lord* of the *Soil* of a Country, he is so also over the *Persons* of the *People*.

F. Before you proceed any farther, I pray give me leave to answer what you have now said, I doubt with greater Shew and Appearance of Truth, than the Matter will justly bear when well canvassed. But since I grant our earliest Writers are very short, in giving us the true Form, or Original Constitutions of our antient *Saxon* Government, it is necessary we look into the *Roman* Authors, who treat of the Laws and Customs of the antient *Gothic* Nations ; a *Stirp* of whom the *Germans*, as well as our antient *English Saxons*, certainly were ; and in those Authors you will find, that they, as well as other Nations of the *Gothic* Original, were never governed by absolute Monarchs ; but by Kings or Princes, limited by the Laws and Common-Councils of their own Nations ; as were all those that descended from this *Gothic* Original.

Vide Grotii
Prolegomena in
Historiam
Gothicam.

Cap. 4.

In the first place therefore, see what *Tacitus* says, in his Book *De Moribus Germanorum*, who sufficiently proves, that it was a fundamental Constitution of all the *German* Nations, to order all publick Affairs in General Councils or Assemblies of the whole People. Wherefore the same Author there tells us : *De minoribus rebus Principes consultant, de majoribus Omnes ; ita tamen, ut ea quoque, quorum penes Plebem arbitrium est, apud Principes praeferantur.* As also that in this Council they try'd great Offenders for Capital Crimes. *Licet apud Consilium accusare quoque & discrimen capitis intendere.* Nor was the Power and Right of their Kings Absolute or Arbitrary, but Limited and Elective, as appears by these Passages in the same Author : *Reges ex Nobilitate, Duces ex virtute sumunt. Nec Regibus infinita, aut libera potestas, &c.* And speaking of the manner of their holding these publick Councils, after Silence commanded by the Priests : *Mox Rex (saith he) vel Princeps, prout atas cuique, prout nobilitas, prout decus bellorum, prout facundia est, audiuntur, auctoritate suadendi magis quam jubendi potestate. Si displicuit sententia, fremitu aspernantur ; sin placuit, frameas concutunt. Honoratissimum assensus genus est armis laudari.* So that you may here see their Kings had no Negative Votes in their Councils, whatever they might have afterwards among the *English Saxons* ; and that they did not so much as preside in them, but the Priests, you may see in the same place : *Silentium per Sacerdotes, quibus tum coercendi jus est, imperatum.* And therefore it is altogether unlikely, that they should have had that Absolute Power, you fancy, over the Lives and Fortunes of the People ; since you plainly see, that they could neither make Peace nor War, accuse or condemn any Man, nor raise Taxes, without the Approbation or Consent of those Councils.

Id. cap. 12.

Cap. 7.

Cap. 11.

Pag. 634.

Now since all the *English Saxon* Nations were from *Germany*, I leave it to the Judgment of yourself, or any indifferent Person, to consider, whether a People so free as this, who came over hither not as Subjects, but only as Volunteers under so many Captains or Generals, who went out merely to seek new Habitations, should be so fond of a Government they never knew at home, as to give these Captains (whom they made their Kings) an Absolute Despotick Power over their Lives and Estates, which they never could endure in their own Country. But that they were not then Kings, I thus prove : First of all, no antient Writer that I know of ever mentioned any such thing, but rather the contrary ; for who will believe, that before it could be known what the Success would be, they should make meer Soldiers of Fortune, or Leaders of some Bands of Adventurers, Kings, before the Country they were to govern was conquered, or that they knew whe-
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ther ever they should arrive there or not ? And as for the two first of these Princes that came over, viz. *Hengist* and *Horfa*, our Histories make them Brothers with joint Command over those *Saxons*, who were sent hither as Auxiliaries to the *Britains*, against the *Picts* ; nor is *Hengist* ever called King, or the Time of his Reign reckoned, till near eight Years after his coming over hither, viz. after the Death of *Vortimer*, and the driving of *Vortiger* into *Wales* : And therefore I can give no account how these Princes should become Kings, but by the Consent or Election of their Soldiers or Followers. For, as for themselves to create themselves Kings, without the Consent of their Army or People, is altogether improbable and absurd, and not at all to be relied on upon your bare Word ; for other Authority you yet give me none. But for the main part of your Assertion, that the first *Saxon* Kings were Absolute Monarchs, because all the Land was conquered for them, and to their Use, and that all Land was held of them, is altogether as precarious, our Histories being herein wholly silent. But tho' we do not certainly know which way they divided their Conquest to their Followers, since Authors mention nothing of it ; yet this I think I may positively assert, that whatever was done in this kind by the first *Saxon* Kings, was not as absolute Proprietors of the whole Country, but as publick Trustees, for those over whom they were sent : For since (as I have already observed) these People were utterly Strangers to a Despotick Government at home, it is altogether unlikely, that their Followers should confer upon them an Absolute and Unlimited Power abroad, which they were never used to before : And therefore they could not be Kings by Right of Conquest over the Estates or Persons of those who were Fellow-Conquerors with them, and set them up for what they were ; nor yet over the *Britains*, since they were either totally driven out into *Wales* or *Cornwall*, or else those few that were left, being reduced to a State of Servitude, were by degrees incorporated with the *Saxons*.

Vid. Poly-
chron. Rad.
Haden. an.
456.

And tho', for want of Antient Histories, as well as Letters, among so rude and barbarous a People as these were at first, we have no Records upon what express Conditions these Captains were by them elected to be their Kings ; yet thus much we may find out by those few Remains we have left us in *Bede* and other antient Historians, that they had all of them the same kind of Government and Laws, with very little difference from each other : Since we find, in all the several Kingdoms of the Heptarchy, there were the same kind of *Wittena Gemots*, or Great Councils, by whom the Kings were elected, and without whose Advice and Consent they could do nothing of moment, either in Peace or War, as any one that will but read those Laws that are left us, collected by Mr. Lambard and Sir H. Spelman, in his *Saxon Councils*, may easily observe.

M. I own indeed, that our *Saxon* Ancestors, when they had conquered this Kingdom, brought in their *Saxon* Laws along with them ; but it doth not from thence follow, that they brought their Popular Government in with them too : And those Assemblies *Tacitus* mentions, might be Councils of the *German* People in general, not of the *Saxons*, which Name is not to be found in all that Author. But what if it be granted, that those People, which were afterwards called *Saxons*, were governed by such Councils, was not this Government a Democracy ? And the People so far from having a Share in these Councils, that they only had Voices in them. And if any had any more Power here than others, they were the Priests, who were a sort of Chair-men in them, commanding Silence, and who had a coercive Power, as *Tacitus* says. In these Governments, no Man can doubt of the Suffrages of the People ; but under such as you mention, you would, I think, scarce be contented to live, where the Priests bear so much sway ; where there were no Cities or great Towns, but only scattered Houses, and Habitations by Rivers, Fields, and Woods, made of Dirt or Clay, Arms of Trees and Stubble ; where there was no Literature, especially among the common People, nor scarce Civility ; where there was no Cloathing, but with Garments made of Beasts Skins ; no Food, but Milk, Pulse and Flesh, without Art or Cookery ; where there was no Propriety in Lands, no Money, no Work for Lawyers, as you will find, if you read *Tacitus*, and the 6th Book of *Cesar's Commentaries*.

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And as for what you say concerning the Beginning of the *Saxon* Kingdoms in this Island ; to this I reply, that *Hengist* and *Horsa*, and those other Leaders, who brought the *Saxons* into *England*, were all of them of the Royal Line of the *Saxons*, as appears by all our Historians ; and so if not Kings, yet well able to subsist. And it was not the manner of those Countries, to thrust out their Supernumeraries by force, but to draw them out regularly by Lot, at such a Rate and Proportion, and to give them Generals and Officers of great Birth and Degree.

Nor is it probable, if they had made Articles with their Followers, that these Princes should have had such Absolute Authority, as they had, over the Lives and Fortunes of their Subjects, in the more early Times, almost all the Privileges of the *English* Nation being granted long since that time ; nay, most of them since the Conquest ; yea, since the *Barons* Wars. But as for what you say concerning the *Gothick* or *Vandal* Kingdoms, since they relate nothing to our Government, I need not say any thing to them ; nor doth it follow, that if their Kings were limited, or but upon condition, that ours must be so too.

Vid. Vershegan. Resitution of decayed Intelligence, p. 23. F. I see you would fain evade the Authority of *Tacitus*, concerning the People's having any share of the Government amongst the *Saxons*, because, forsooth, that Nation is not particularly nam'd in his History : But tho' the *Saxons* are not particularly nam'd by *Tacitus*, yet the *Angli* are there mentioned among those *German* Nations, who worship'd their common Goddeß *Hertha*, which that Author interprets to be *Terra*, the Earth ; and you very well know, that from these *Angli*, or *Angles*, the *English* Nation as well as Name is derived. But tho' *Tacitus*, who lived about the Beginning of the Emperor *Trajan's* Reign, names not the *Saxons* ; yet *Ptolomy*, who writ within 40 Years after, expressly mentions them, placing their Country not far North of the River *Albis*, and near the Place where all agree the *Angli* were seated ; so that they were either all one and the same Nation, or very little different. But *Ethelwold Quæstor*, one of our antientest *English* *Saxon* Historians, in his first Book, makes this Nation of the *Saxons* of a far wider Extent, and that it reach'd from the River *Rhine* all along the Sea-Coast up to *Donia*, now called *Denmark*.

But since I see you cannot well tell how to evade this Testimony of *Tacitus*, but by affirming, that the Government in *Germany* was a *Democracy* ; and, that the People had the only Sway in it, is a great Mistake, since he expressly mentions their Kings and Princes, and there only speaks of the manner of transacting all publick Affairs, in which, it is true, the People (as it is very well known by our antient Histories) had formerly a greater Share than now ; yet doth he not thereby exclude their Princes and Nobility from having also their Shares in it. And as for what follows in *Tacitus*, of the Royal Power, *auctoritate suadendi, magis quam jubendi potestate* ; I suppose you cannot deny, but that Privilege yet remains to us, since the King cannot command the Parliament to make what Laws, or give him what Money he pleaseth : And therefore that doth not make it a *Democracy*, much less the Priests presiding in their Assemblies, which is no more to be wonder'd at, than that the Bishops have still Votes, and their Share of Legislature in the House of Peers ; or that a Bishop, when Chancellor or Keeper, should be Speaker in the House of Peers. Or supposing that their Priests had more Power among them, than the Christian Clergy had after they were converted, doth it therefore follow, that it was not the same Government, or that it must therefore be so intolerable, that I would not have been willing to have lived under it ? Since, I must tell you, I am not against Civil Offices, though exercised by *Clergy-men*, as far as the Business of their Function, and the Canons of the Church will permit. As for the rest which you object concerning the barbarous living of the antient *Germans*, it either makes nothing to the matter in hand, or else against you ; since it proves plainly, that Absolute Monarchy was not the first Government among all Nations, as you suppose. Nor doth it therefore follow, that because these People were rude and barbarous, therefore they had not the Wit to prefer Absolute Monarchy before

fore all other Governments, since the *Romans* (who sure were a civiliz'd People) did likewise as much abhor it.

But as for what you say against *Hengist*, and those other Leaders, who brought the *Saxons* into *Britain*, being elected Kings by their Followers, is nothing but meer Guess and Conjecture. For that they were not Kings at home, you your self grant; and whether they were able well to subliſt at home, or not, is nothing to the purpose. It is plain they thought they could mend their Condition, or else would never have left their Country. And tho' it be granted, that *Hengist*, with his Followers, came not over as Enemies, but Auxiliaries to the *Britains*; yet it is not therefore more likely, that they were chosen by the King of their own Nation, than that their own Followers should afterwards elect them, especially when the one is agreeable to our own Historians, and the other not: For *Mattheus Florilegus* tells us, that *Horsus* being slain, the *Saxons* *Fratrem suum Hengistum in regnum Cantia sublimaverunt*; that is, they elected or advanced him to be King, if I understand any thing by that Word: And this agrees with the *Polichronicon* of *Ramulph Higden*, who places the Beginning of *Hengist's* Reign immediately after the Death of his Brother *Horsus*, viz. *Anno Dom. 465.* eight Years after the coming of the *Saxons* into *Britain*. And that the rest of the *Saxons*, who came hither after, had no better Title than Election, I could farther prove, if the Time would give me leave: For they that will read the antient Accounts of the *Saxon* Nation, and what Government they had among them, long after the Time of *Cesar* and *Tacitus*, will find that it was impossible that they should be thus created Kings before they came over; since at that time they had no such things as constant Kings amongst them: For in those Times it was rather an *Aristocracy* than a *Monarchy*, as *Johannes Pomarius* in his *Saxon* Chronicle sheweth us, for which I refer you to *Verstegan*, where this Passage is made use of at large. *Verstegan*, p. 68. So that if this were the Government of the *Saxons* as low as the Time of *Charles the Great*, I durst leave it to any indifferent Person to judge, whether the first *Saxon* Kings in this Island were made so by their own Princes before they came over, or were chosen by their Followers; since no Historians mention the former, tho' all of them agree of the latter: They commonly using this Phrase, *Regem fecerunt*, or *elegerunt*. And that all the first Kings of the *Heptarchy* were Elective, nothing is more plain; since the Great Council of the Nobility and People did not only elect them, but often depose them too, when they grew intolerable, through Tyranny or Misgovernment; as may appear by the Example of *Sigibert*, King of the *West-Saxons*, and divers others I could instance in, who were expelled this Kingdom (as *Brompton* and other antient Chronicles tell us) by the unanimous Consent and Deliberation of the Nobility and People. Many like Instances I could give you in the other Kingdoms of the *Heptarchy*, but that it would be too tedious.

Vid. Earl of
Stamford's
Speech at
the General
Quarter Ses-
sions at Lei-
cester, 1690.
and the
Notes there-
upon.

Vide Brompton. Chron.

col. 770.
Chron. de
Mailros,
f. 137.

Nor doth your Reason signify any thing, that it is not probable that the first Princes were made Kings upon condition, because of the absolute Authority they had over the Lives and Fortunes of their Subjects, since it is altogether false in Matter of Fact; none of the *Saxon* Kings being able alone to make Laws, or impose Taxes upon their People, without their Consents in their Great Councils, much less to make War without it: For then the War, though begun by the King alone, must have signified little in an Age, when there were no Standing Armies, nor Money in the Prince's Power to pay them, there being then but little Coin of any sort, and their Revenues being mostly paid in Victuals.

M. Pray, Sir, give me leave to interrupt you a little. I own indeed, that the particular Laws and Constitutions of each of the Kingdoms of the *Heptarchy* are not particularly known; and perhaps some of their Kings might be Elective, and consequently liable to be deposed by their People, whether by Right or Wrong, I will not now dispute: But if we consider the State

of things, after these seven Kingdoms became reduced into one, you will find them much altered; and as *Egbert*, our first *Saxon* Monarch, reduced all those Kingdoms into one, so it is to be supposed, that having no Right to them but by Conquest, and the Submission of their Kings, when overcome in Battle, both he and his Successors must needs have become far more absolute than they were before; and if they were Elective before that time, did now certainly become Hereditary Monarchs, the Crown descending from Father to Son for divers Descents: And so consequently these Princes granted divers Privileges and Liberties to the People of those Kingdoms they conquered. And that they were no other than the free Grants or Concessions of our former Kings, upon Petition or Request of the People, and accepted by the Clergy, Nobility, and People of the Kingdom, in their Great Councils. For this I need go no farther than the *Coronation Oath* taken by the Kings of *England*, when the Archbishop of *Canterbury* asks the King: *Sir, will you grant and keep, and by your Oath confirm to the People of England, the Laws and Customs granted to them by the antient Kings of England your Predecessors; and namely, the Laws and Customs and Liberties granted to the Clergy and People by the Glorious King Edward your Predecessor?*

From whence we may observe, that all the Bishops, Earls, Barons, and People there present, do own and confess, that their most antient Laws, Customs, and Liberties, were granted to them by *Edward the Confessor*, and other antient Kings.

F. I doubt you will prove as much out in the Account you give me of our Kings Power, after the seven Kingdoms were reduced into one, as you were before. For though I grant, that the Title of the *West-Saxon* Kings over all the rest proceeded from Conquest, and the Submission of the Kings and People they conquered; yet were they not all actually reduced into one Kingdom or Monarchy till a good while after; the Kings of *Mercia*, and of the *East Angles*, continuing in being till the coming in of the *Danes*, as you will find by our *Saxon Annals*. And though 'tis true, the *West-Saxon* Kings made those Princes tributary to them; yet that they did not become more absolute thereby, appears from the Testimony of our antient Histories; since we find them transacting all Affairs in their *Wittena Gemots*, or Great Councils, as well after their Conquest, as they did before. And therefore we find, in an old Register of *St. Leonard's Abby* in *York* (cited in the *Monasticon Anglicanum*, put out by *Mr. Dugdale*) this memorable Passage: *Memorandum quod anno Domini 800, Egbertus, Rex totius Britannia, in Parlamento apud Wintoniam mutavit nomen Regni (de consensu Populi sui) & jussit illud de cetero vocari Angliam.* And *Will. of Malmsbury*, that antient and exact Historian, says expressly of this King *Egbert*, *Lib. 11. Has omnes Regnorum varietates Egbertus animi magnitudine compefcuit, & ea uni quadrans Imperio ad uniforme Dominium, servans unicuique proprias Leges, vocavit Angliam.* It is therefore most evident, that upon the Submission of those Kingdoms he conquered, he promised and agreed to govern them according to their antient Laws; and hence we find the *Mercian* Laws called *Merchen Lage*, to have continued in force long after that Kingdom was united to that of the *West-Saxons*.

Nor will your Inference from the *Coronation-Oath* prove of any greater moment: For tho' it be therein recited, that divers of the Laws, Liberties, &c. we now enjoy, were granted by King *Edward the Confessor*, and other Kings; yet must it not be so understood, as if the People of *England* had no Laws or Civil Rights before his Time; for that were to contradict plain Matter of Fact, and the Histories themselves I have already cited. But why they were called *his Laws*, and *his Customs*, *William of Malmsbury* hath very well observed, when speaking of the good Laws made by antient Kings, and especially by King *Ethelred*, which were confirm'd by King *Cnut*, he hath this remarkable Passage: *In quarum custodiam etiam tunc temporis bonarum, sub nomine Regis Edwardi jvatur, non quod ille statuerit, sed quod observaverit.* The like

like I may say for the Laws of divers other *Saxon* Kings ; which though they go under their Names, yet were made by the Assent of the Great Council of the Kingdom, as by the Titles of the Laws themselves in Mr. *Lambard's* and Sir *H. Spelman's* Collection of them, you may be satisfied if you please.

But for a taste, pray see the Laws of King *Alfred* ; which, though said to be made by him (as indeed it is true, he compiled them out of divers other Laws, formerly in force in the other Kingdoms of the *Heptarchy* :) Yet that they were also assented to by the *Wittena Gemots*, pray see the Conclusion of these Laws in Sir *H. Spelman*. The Words are remarkable ; *Ego Ælfredus, West-Saxonum Rex, ostendi hæc omnibus Sapientibus meis, & dixerunt placet ea custodiri*. So that the calling them the Laws of King *Alfred*, or King *Edward*, doth no more prove that they alone made them, than our now citing such or such a Statute of King *Hen. 8.* or King *Charles I.* do therefore suppose, that those Kings made Laws by their own Sole Authority ; such Phrases among ancient Historians, as well as ourselves at this Day, being used only for Brevity sake, and signify no more than their Confirmation of them.

M. I shall not deny, but that our ancient *English* Kings did for the most part make no Laws without the Consent of their Great Council : Yet I think I can give you an unanswerable Argument to prove, that the very Being and Constitution of Parliaments, or Great Councils, did in the beginning wholly proceed from the Grace and Favour of some of our ancient Kings ; though to which of them to ascribe it, is not easy to determine. But if we may believe your own Author the *Mirror*, he tells us almost at the very beginning ; *That King Alfred, for the good State of the Realm, caused to assemble the Counts or Peers ; and then ordained for a perpetual Custom, that twice in the Year, or oftner, for Business in time of Peace, they should assemble at London to treat of the Government of the People of God, and how Folks should keep themselves from Offences, and live in Quiet, and should receive Right by certain Usages and Judgments. And according to this Establishment were made divers Ordinances by several Kings, until the present King (viz.) Edw. 1st.*

But to come to the Proof of what I affirm, it is certain, that in those first Times the *Saxon* Kings conferred all the Bishopricks, and principal Abbeyes in *England*, per *Annulum & Baculum*, as *Ingulf* and *Malmesbury* expressly tell us. And as for the Earls or Aldermen of Counties, as also the Great *Thanes*, Judges or Noblemen of the Kingdom, they were only Offices held for Life in those Times, which the King might discharge them of at his Pleasure : And hence we find the Titles of *Aldermannus Regis*, and *Thannus Regis*, so frequently to occur in our ancient Histories and Charters : Those comprehended under the general Name of *Wites*, being the only constituent Parts of the Great Council of the Kingdom in those Times ; for as concerning those we now call the *Commons of England*, we do not so much as find the least mention of them, or any Representatives for them, till the latter end of the Reign of King *Henry* the 3d. or the middle of *Edward* the 1st. as I think Dr. *Brady* hath learnedly and fully proved in his last Edition of his Answer to Mr. *Pery's* Treatise of the *Rights of the Commons of England Asserted*. Now if it plainly appears, that every Part or Member of the Parliament did anciently receive their very Being from the meer Grace and Concession of our ancient Monarchs ; can you, or any reasonable Man, assert with any colour of Truth, that our Great Councils, or Parliaments, could be a Part of the Fundamental Constitution, and as ancient as the Government itself ? And if Parliaments did thus receive all that Authority they now exercise from the King's Bounty, can any Man doubt whether all the Rights and Privileges we now enjoy, are to be ascribed to any other Original ? For if the very Keepers (as you will have it) of these Liberties, did all proceed from the King, then certainly the things to be kept must do so too ; and when you can answer this Argument I have now brought, I think I may safely promise you to be your Proselite, and to come over to your Opinion.

M. I confess, this is the most plausible Argument you have hitherto urged ; and if I can't answer it, I do likewise promise you to become your Convert. But though, granting that Parliaments might have received their Being from the Favours of our Kings, I might deny your Consequence, that therefore it will follow that all the Rights and Liberties of the Subjects of *England* must do so too ; since they might very well have reserved to themselves both Hereditary Properties, as also a Right to their Lives, Liberties and Estates, which the King should not take from them without just Cause, and legal Trial ; which when they found invaded by succeeding Princes, they might then (and not till then) find constant Great Councils and Parliaments to be necessary for that end, and as the firmest Bulwark against the Tyranny of succeeding Princes : But the Author of the *Mirror*, in the Section before the place from whence you took your last Quotation, expressly tells us otherwise ; that upon the first Election of a King to reign over the rest of the *Saxon* Princes, *they first of all made him to swear, That he would maintain the Holy Christian Faith with all his Power, and would govern his People according to Right, without regard to any Person, and should be liable to suffer Right (i. e. Judgment) as well as others of his People.* And though I do not give any Credit to all the Story he there relates of 40 Sovereign Princes in this Island at once ; yet the Substance of it may be true, that this Election was made of King *Egbert*, by the 40 Earls or Counts of those Provinces, which were afterward by King *Alfred* called *Shires*.

But that this Author ascribes the Beginning of Great Councils to the first Institution of the Government, pray see what he there farther says : *And though the King can have no Peer in the Land, nevertheless, if by his own Wrong he offends against any of his People, none of those that judge for him can be both Judge and Party : It is therefore agreeable to Right, that the King should have Companions to hear and determine in Parliament all Writs and Complaints concerning the Wrongs of the King, Queen, and their Children, of which Wrongs they could not otherwise have common Right. These Companions are therefore called Counts, after the Latin, Comites.* Whereby you may see, that this Author and *Bracton*, who were Contemporaries, were of the same Opinion in this important Point : And I cannot imagine how any Prince, who had Power sufficient in his hands to do what he pleased, (as you suppose our *English* *Saxon* Monarchs to have had at the first) would ever, if they could have help'd it, have instituted a Court, one of whose chief Businesses it was to examine and redress the Wrongs and Oppressions of themselves, their Wives and Children.

But besides all this, what you say might be somewhat likely ; that our Parliaments, or Great Councils, did owe their Original only to the Kings good Will and Pleasure, did we not find the like Constitution to have been in all the Neighbouring Kingdoms in *Europe*, which have been raised according to the *Gothic* Model of Government, upon the Ruins of the *Roman* Empire. Now let us look into *Scotland*, and there we shall find this Institution as ancient as any History or Record they have. If we pass into *France*, we shall find their Assembly of Estates, or Great Council, to have been as ancient as their first Kings, and to have had as much Power as any where else in *Europe* : Since they not only frequently elected, but also deposed their Kings of the first Race, and disposed of the Succession of the Crown as they thought fit. If we look into *Spain*, we shall find in the two greatest and most considerable Kingdom, *viz. Castille and Arragon*, the like Assemblies : The Power of which was so great in the latter, that they could even depose the King himself, if he tyranniz'd over or oppress'd them. If we go more Northward, we shall find in the ancient Kingdoms of *Denmark* and *Sweden*, and *Norway*, that their Assembly of Estates, or Diets, elected their Kings, and could likewise depose them, till those Kingdoms became Hereditary, which was but of modern Times. I shall omit *Poland*, because perhaps you may dispute whether it is a Kingdom, or a Commonwealth. But if we pass into *Hungary*, which was instituted by the *Huns*, a Nation of *Gothic* Original, we shall find not only the like Assembly of Estates, as in the other Kingdoms ; but also that they had a Magistrate

giltrate called the *Palatine*; who was, as it were, the Conservator of the People's Liberties; and who could resist even the King himself if he invaded them; and which is also very remarkable in all these Kingdoms, the Representatives of the Cities, or principal Towns, (which constituted the third Estate, or Commons in those Kingdoms) had always a Place in those Great Councils.

So that, to conclude, it is almost impossible to conceive how these Kingdoms I have now mentioned, could all agree to fall into the same sort of Government about the same time, unless it had proceeded from the particular Temper and Genius of the *German* and *Gothick* Nations, from which they were derived: Or who can believe, that all these Nations, and their Kings, finding the like Conveniencies from these Great Councils, and Inconveniencies by the want of them, should all conspire to set them up in each of these particular Kingdoms.

M. I will not deny but that the Institution of Great Councils, or Assemblies of the Estates, might be as ancient as the Government itself, in several of those Kingdoms you mention, which were at first elective: But what is that to *England*, where our Monarchy hath been by Succession from the first Institution of it, and not Elective, as you suppose? Nor do I much value the Authority of the *Mirroure* as to the great Antiquity he ascribes to this Assembly of Counts, or *Comites*, (as *Bracton* calls them) and in which, by the way, no Commons are mentioned.) And though I grant, the Judicial Power of the House of Peers, is very ancient; yet that it wholly proceeded at first from the Indulgence of our Kings, appears from hence, that there was always a Necessity of the King's Presence in Parliaments, which is very well proved by Sir *Robert Cotton* in a learned Treatise written on that Subject: Wherein he proves, that in all Consultations of State, and Decisions of private Plaints, it is clear from all Times the King was not only present to advise, but also to determine. And whensoever the King is present, all Power of Judging, which is derived from his, ceaseth; the Votes of the Lords may serve for matter of Advice, the final Judgment is only the King's: But indeed of late Years, Queen *Mary* and Queen *Elizabeth*, by reason of their Sex, being not so fit for publick Assemblies, have brought it out of use; by which means it is come to pass, that many things, which were in former Times acted by Kings themselves, have of late been left to the Judgment of the Peers; who, in quality of Judges extraordinary, are permitted, for the Ease of the King, and in his Absence, to determine such Matters as were anciently brought before the King himself, sitting in Person, attended by his Great Council of Prelates and Peers: And the Ordinances that are made there, received their Establishment either from the King's Presence in Parliament, where his Chair of State is constantly placed, or at least from his Confirmation of them, who in all Courts, and in all Causes, is Supreme Judge. All Judgments are by, or under him, and cannot be without, much less against his Approbation: *The King only, and none but He, if He were able, should judge all Causes*, saith *Bracton*. So that nothing seems plainer to me, than that the Jurisdiction which the House of Peers have hitherto exercised for the Hearing and Determining all Causes, as well Civil as Criminal, by way of Appeal, not only between Subjects, but also in all Accusations against the Lords themselves, proceeds wholly from the Concession of our Kings; which may appear by an ancient Precedent, mentioned by Abbot *Brampton* in his History. It is the Case between King *Edward the Confessor*, and *Godwin* Earl of *Kent*, whom the King accused for the Death of his Brother Prince *Alfred*; before the House of Peers; and there you will find, that after the Earl had put himself upon the Judgment of the King's Court, the King thereupon said; "Yon Noble Lords, Earls and Barons (i. e. *Thanes*) of the Land, who are my Liege-Men now gathered here together, and have heard my Appeal and *Godwin's* Answer; I will, that in this Appeal between us, ye decree right Judgment, and do true Justice." And upon their Judgment, that the Earl should make the King sufficient Satisfaction in Gold and Silver, for the Death of his Brother; the King being thereof informed, and not willing to contradict it, (the Historian there saith) *He ratified all they had judged*. I could give you many other Precedents of latter Date, were it not too tedious:

But

F. F. G. J.
p. 34.

Vi. Script. x
Ann. 1041.
Col. 937.

But this is sufficient to shew, that what the Peers acted in this matter, was by the King's Sole Will and Permission. I shall only conclude with one Precedent more, in a Case somewhat of a like Nature. It is that of *Henry Spencer Bishop of Norwich*, 7 *Rich. II.* who was accused for joining with the *French*: The Bishop complained what was done against him, did not pass by the Assent and Knowledge of the Peers: Whereupon it was said in Parliament; "That the Cognizance and Punishment of his Offence, did of common Right, and ancient Custom of the Realm of *England*, solely and wholly belong to our Lord the King, and no other." From all which I infer, that the Judicial Power exercised by the House of Peers, is meerly derivative from, and subservient to the Supreme Power residing in the King. From whence it also follows, that if the Peers have no Power nor Honour but what proceeds from the Prince, and that the Commons were of a much later Date, then both the Being and Privileges of both Houses had but one and the self-same Original, viz. nothing else but the meer Grace or Favour of our Kings. I have only added this, the better to enforce my former Argument; and therefore I desire you would now answer them both together.

F. I am very glad your last Argument doth not prove so formidable as you suppose; for to remove that out of the way, I must tell you that you now very much mistake the Question; which is not only concerning the Judicial Power of the Peers alone, but the Legislative Power of the House of Peers and Commons taken together, which is the Subject of our present Dispute: And therefore if I should grant you, that the Judicial Power of the Peers is derived wholly from the King; yet would it not at all impair the Legislative Power of either of the Houses, which no Historian or Law-Book that I know of (that is of any Credit or Antiquity) ascribes to the King's Favour, as you suppose: Nor is it true, that the House of Peers can give no Judgment, either Civil or Criminal, without the King's Consent or Approbation, which is never so much as ask'd, let the Cause be what it will; nor is his Presence at such Judgments at all necessary; but indeed you confound the King's Council in Parliament, (where I have shewed you already, he sat and dispatched divers Causes in a Room or Chamber, distinct from that of the Peers) or House of Lords.

But to come to your main Argument, that our Parliament must owe its Original to the King, because each of the Estates of which it consists, doth so. This I hope will prove as weak, when thoroughly considered: For first of all I could shew you, that these Councils could not owe their Original to the King, since the *Saxon Kings* rather owed their Original to them, by whom they were most commonly elected, as I could shew you out of our ancient Historians, if it were now a proper time for it. But as for our Bishops and Abbots, &c. which anciently made so great a figure in our *Saxon Great Councils*, (which I can shew you, were then both Civil and Ecclesiastical Assemblies) I have already proved out of *Tacitus*, that among the ancient *Germans* (a part of whom our ancient *English Saxons* were) their Priests (who were their Clergy) had a considerable Authority in their Common Councils. And can any Body believe, that a Sort of People so powerful and subtle, as the Priests then were, would lose their Power after they came over into *England*? And we find in *Bede*, that *Edwin King of Northumberland* consulted with a Council of his Great Men and Priests, concerning his embracing the Christian Religion; and when it was generally received, can any Body think that the Christian Bishops and Clergy would not expect to succeed in the same Station which the Heathen Priests before held in their Councils? And that they enjoyed this Power very early, appears from hence, that the same *Ethelbert* could not endow the Church and Monastery of *Canterbury*, *sine Assensu Magnatum & Principum tam Cleri quam Populi*.

But indeed you are as much mistaken in the Manner of the ancient Elections of Bishops and Abbots in *England*: For though I own that at the time of the Conquest, and somewhat before, there might be no such Elections of them as the ancient Canons required; yet that this was not so at the first, you may see in

L. 2. c. 13.

Vi. Spel. Conv.
p. 619, 620.

in *Bede's Ecclesiastical History*, and other Historians; where it is often mentioned, that Bishops were chosen, according to the Canons, by the Archbishops and Bishops of the Province, and Abbots by their Convent: Nor was the King's investing of them *per Annulum, & Baculum*, then look'd upon as any Derogation to their Canonical Election, that being no more than either a Ceremony of investing them with their Temporalities, or a Token of the King's Confirmation of the Election. And that this was so, appears by King *Edgar's* Charter to the Abby of *Glastonbury*; wherein he retains to himself, and his Heirs, *Jus tribuendi fratri Electo Baculum Pastoralem*.

But that which so much scandalized both *Ingulph* and *Malmesbury*, was a Custom then in use, as also long before the Conquest, of Confirming the Bishop Elect in a full Synod or Parliament. And to this Custom *Ingulph* refers, when he tells us, *A multis annis retroactis nulla erat Electio Prelatorum mere Libera, & Canonica: Sed omnes Dignitates tam Episcoporum quam Abbatum Regis Curia pro sua Complacentia conferebat.* Where, by *Curia Regis*, you must not understand the King's Court in the Sense it is commonly taken, but for the Great Council or *Mikel Synod*, as it was then called, and which dispatched Ecclesiastical, as well as Civil Affairs, in the same Sense as *Curia Regis* is used by *Brompton*, in the Case of King *Edward* and Earl *Godwin*, which you but now cited: And in which Sense it is always used by *Ingulph*, when he speaks of the Great Councils under the two *Williams*. I will not be very tedious on this Subject, and shall therefore give you but one Authority on this Head; and it is that of *Wulstan*, who was made Bishop of *Worcester* in the time of *Edward the Confessor*; and that, as *Mat. Paris* tells us, *Unanimes consensu tam Cleri, quam totius Plebis (Rege ut quem velens sibi eligentem annuente) in Episcopum ejusdem loci eligitur.* And then he goes on thus; *Nam licet fratrum non deesset Electio; yet that there concurred to it, Plebis Petitio, Vultus Episcoporum, Gratia Procerum, Regis Autoritas:* All which amounts to no more than that he was proposed by the People, chosen by the Bishops and Peers, and confirmed by the King: Yet that all this did not hinder him from being invested *per Baculum, & Annulum*, as the Custom then was, may appear by the Speech this Bishop *Wulstan* made at the Tomb of *Edward the Confessor*, whither he went to resign his Pastoral Staff after his being deprived of his Bishoprick by Archbishop *Lanfrank*, and the Synod. And the Conclusion of this Speech is remarkable, *Tibi (scil. Edwardo) Baculum resigno qui dedisti, Curam eorum dimitto quos mihi commendasti.* A like Example I could give you of the Election of this Archbishop *Lanfrank* himself in the King's *Curia*, or Great Council, not long after the Entrance of King *William*. But for this I refer you to *Eadmerus*, and the Reign of that King, printed at the end of *Mr. Taylor's History of Gavel-kind*.

But admitting that the King alone had in those Days conferred all Bishopricks, does it therefore follow, that his Nomination of Bishops, in the pursuance of that Trust which the Kingdom reposed in him, did likewise make them to derive all the Right they had to sit in the Great Council from the King's sole Authority? You might indeed with as much Reason urge, that because the Emperor *Theodosius* (as likewise divers of his Predecessors) did nominate Bishops to Sees, therefore they did likewise receive from them all the Authority they had of appearing and acting in General Councils, which I am sure you are too good a Church of *England* Man to affirm.

M. I must confess I never did so closely examine the antient Form of conferring of Bishopricks before the Conquest, as I find you have done: And I will better examine your Authorities; and if I find this Custom to have been constant and uniform, I shall come over to your Opinion. Though I doubt it will not prove to have been so general as you would make it; since by the Authority you have now brought out of *Mat. Paris* it appears, that it was the King who gave leave to this Election of Bishop *Wulstan* in the Great Council, which I am not yet convinc'd did then take upon them to meddle in Ecclesiastical Matters without the King's Consent: But since you have spoken enough concerning the Right and Antiquity of the Bishops sitting in our Great Councils,

Councils, it is time you now speak of the Right of the Peers, or Temporal Lords, which certainly could have no place there but from the Favour and Concession of our Kings: So that whether we consider those Lords in the Saxon Time as Rulers of Counties, called in old *English* *Earls* or *Aldermen*, in *Latin* *Duces* or *Comites*; or else as Judges or Counsellors, called in old Saxon *Wites* or *Wisemen*, in *Latin* *Sapientes*: Or lastly, as *Thanes*, in *Latin* *Ministri*, who were either Military Tenants, or Civil Ministers; or else Officers of the King in his Court, or other Employments; none of them were Hereditary in those Times, but all of them either depended upon the King's Will, or else owed their Honours and Estates to his Favour.

Vi. Dugdale's Preface to his Baronage of England. F. I hope, notwithstanding the Confidence you put in this part of the Argument, that it hath no more weight in it than the former. For though I grant there was no such thing as Hereditary Earldoms before the coming in of the Normans: So that though both the Earls and Aldermen might have Places in the Great Councils, *Ratione Officii* (as the Earl Mareschal of England has at this Day) and not by *Tenure*, as they did after that time; yet I very much doubt whether they sat there only *Ratione Officii*, and not as *Thanes*; or by Reason of their great Lordships, or Estates in Lands; but if they sat there as Earls or Aldermen, yet might they not be the only Persons that sat in those Councils by that Title. For there were, besides these, Aldermen of Cities and Boroughs, who were elected by those Places; and who it is very likely appeared for them as their Representatives in those Councils, until by Succession of Time those Towns began to send two Burgesses in their stead; - some Footsteps of which still remain in London, where the Aldermen of every Ward are first proposed to be elected Parliament Men before any other: And it is certain that these Aldermen, in the most antient Cities, as London, York, Lincoln, &c. are not elected by any Grant or Charter from the Crown, but by an immemorial Right of Prescription.

But admitting that these Earls or Aldermen appeared in these Councils, by reason of their Offices or Dignities which the King conferred upon them, yet doth it not prove, that the very Office itself proceeded wholly from him; since we find the Authority of those chief Men, whom Tacitus calls *Princes*, (and which answer these Earls) to have been used among the antient Germans long before, when he tells us in the same Chapter where we cited the rest; *Jura per Pagos, Vicosque [Principes] reddunt, centeni singulis ex plebe Comites Concilium simul & auctoritas adsunt.* Which exactly answers our County, and Hundred Courts, under the Saxon Kings; wherein the Alderman of the County, or his Deputy the Sheriff, presided, and the Freemen of the County or Hundred were the Judges of all Matters of Fact. So that, though the King might appoint these Princes or Governors of Provinces, or Counties, yet doth it no more follow, that they owed their Being and Place in the Great Council wholly to his Will, than (as I said before) supposing that the King had antiently the Nomination of all the Bishops and Abbots in England, that therefore they must also owe their Place in our great Councils, or Synods, wholly to them; since the King performed both of them as a publick Trust committed to him by the Commonweal in the one case, as much as in the other.

But indeed, I think the greatest part of the Members of this Assembly (besides Aldermen and Burgesses for Cities and Towns) consisted of those *Thanes*, whose Names are often found in the Subscription of the antient Charters of our Saxon Kings after the *Principes*, *Duces* and *Comites*; and that though many of them might be the King's Feudal *Thanes*, or Tenants in Grand Serjeanty, or Knights Service in chief, as Mr. Selden tells us in his *Titles of Honour*, yet that Author no where excludes the *Μεσμεπαδεγεις* or *Λεγγεγεις*, i. e. middle or less *Thanes*, from having Voices in those Assemblies, who were afterwards stiled *Vassours*, or Lords of Townships, afterwards called *Manors*, with Courts annexed to them under the Names of *Sac* and *Soc*; which were the same with our *Court-Leet* and *Court-Baron*: Especially, if you please farther to consider what
a vast

a vast number of *Alodarii*, or *Free Tenants* there were then, who held their Lands discharged of all Services, but the common Burthens and Taxes of the Nation, none but the Lands of the King's *Thanes*, being held by Military Services before the Entrance of the *Normans*.

So that whoever will but consider the Nature of our *Saxon* Councils will find, that the greatest part of the Persons that appeared there did not owe their Places only to their being the King's Ministers or Officers, as you suppose, but to their holding such Lands and Possessions as capacitated them, and gave them a Right to have Places in those Great Councils. And that this was so, we need not go no farther than the Laws of King *Athelstan*, where you will find *Gentility* itself annexed to an Estate in Land: For if you will but be pleased to consult King *Athelstan's* Laws, you will there find, that if a *Villain*, *Vi. Lamb* or *Cheorl*, could so thrive as to get an Estate of *five Hides* in Lands, he was^{p. 54.} reckon'd a *Thane*, i. e. a *Gentleman* or *Nobleman*, as they were promiscuously reckoned at that time.

So that though I suppose there might not be in those Times that exact Distinction between Peers and Commons, as there hath been established since the coming in of the *Normans*; yet was it the same thing in effect, since the Bishops, Earls or Aldermen of Shires (though not enjoyed as Hereditary Honours) might make them the greater Nobility or Peers, as the *Thanes* were the less Nobility, Gentlemen, or principal Freeholders; who all appearing in Person, might, together with the Aldermen or Burgeses of Towns, represent those which we now call the *Commons*. And supposing that then there were no Knights of Shires, yet these being then the only Proprietors of any considerable Estates of Land in the Nation, might very well represent all their Vassals or Under-Tenants, as Tenants for Years, and at Will, are at this Day by the Knights of Shires, though they have no Votes at their Election.

To conclude: Though I grant that the Kings of *England* are the Fountain of that Honour, which we call *Peerage*; yet it is only in pursuance of that antient Constitution which their Ancestors brought out of old *Saxony* and *Normandy* along with them, as the firmest Defence of Kingly Power against the Insolency and Inroachments of the common or meaner sort of People, as well as Tyranny in their Princes. And therefore in all Monarchies where there is no Hereditary Nobility, the Prince hath no surer way to maintain his Power than by Standing Armies, to whose Humours and Factions he is more subject, and is also more liable to be murdered, or deposed by them (when discontented with him) than ever any limited Prince yet was, or can be by his Nobility or People. As I could shew you from a Multitude of Examples, not only from the *Roman*, but *Moorish*, *Arabick* and *Turkish* Histories: And therefore, to constitute a lasting, stable, limited Monarchy (as ours is) it must be according to the Model I have here proposed.

M. I shall not contradict the latter part of your Discourse; but I must freely tell you, that if (as you yourself grant) there were no Knights of Shires in the *Saxon* Times, I cannot see how those we call the Commons of *England* had then any Representatives in the Great Council; since those *Thanes*, or Lords of Manors, whom you suppose to have represented their Tenants or Vassals, were never chosen by them, and consequently could not properly be their Representatives: But I think it will be easy enough to prove, that none of your inferior or middle *Thanes*, but only the chief or superior, had Places in those Assemblies. So that these *Feudal Thanes*, or such as held of the King in chief by Military Service, were of the same kind with them that were after the *Norman* Times Honorary or Parliamentary Barons, and their Lands alone were the Honorary Thanelands, and such as were afterwards Parliamentary Baronies. Nor can I find any Foot-steps in our antient *English* Histories of Cities and Boroughs sending any Represen-

Representatives to those Great Councils. So that admit I should own at present, that the Bishops, and some great Abbots, had, from the first settling of Christianity in this Island, an indisputable Place in the Great Councils; and likewise that the Earls, Aldermen, or great Nobility, had also Votes in those Assemblies; and that the chief *Thanes*, or less Nobles, had also their Places there, by reason of the Tenure of their Estates: Yet certainly the *House of Commons* was of a much later Date, and owed its Being either to the Grace and Favour of our Kings of the *Norman* Race, or else to those that had usurp'd their Power. And this I think *Dr. Brady* hath very well proved against *Mr. Petyt*: And I think I could convince you also of the Truth of it by his, as well as other Arguments, were it not now too late to enter upon so long a Subject.

F. Therefore, pray let us defer any further Discourse of this Question till the next time we meet; wherein I hope I may shew you, that if you owe that Opinion to the Doctor's Arguments, he hath led you into a very gross Mistake. And I shall only at present take my leave of you, and bid you good Night.

M. I wish you the like.





Bibliotheca Politica.

D I A L O G U E VI.

Whether the *Commons* of England, represented by *Knights*, *Citizens*, and *Burgesses* in *Parliament*, were one of the *Three Estates* in *Parliament*, before the 49th of *Henry III.* or 18th of *Edw. I.*

M.  I R, You are welcome; and since you were pleased to send me word, that you would come and sit with me this Evening, I have been looking over all the *Saxon Councils*, collected by Mr. *Lambard*, and Sir *H. Spelman*, and yet I cannot find in them any Mention of *Knights of Shires*, or *Burgesses* for *Cities* or *Boroughs*; the only Persons there mentioned, as Members of those Great Councils, being *Archbishops*, *Bishops*, *Abbots*, and *Great Lords*, and *Judges*; often called by the general *Latin Names* of *Magnates*, *Principes*, *Proceres*, *Optimates*, or *Primates Regni*, which were all comprehended under the *Saxon Word*, *Wites*, i. e. *Sapientes*; by whom (as Sir *H. Spelman* shews us in his Glossary) were meant only *Senators*, or *Wise-men*; that is, either *Noblemen*, or *Great Lawyers*; *Wite*, in *Somner's Saxon Dictionary*, being first rendred *Optimas*, a *Nobleman*; and then *Sapiens*, a *Wise-man*. So that these *Wites*, or *Sapientes* (so often mentioned in our Ancient *Saxon Laws*) when they are put alone, signify all the *Ecclesiastick*, as well as *Lay-Members* of the great Council, such as *Earls*, *Aldermen*, and *Thanes*, and *Judges*, as Dr. *B.* more particularly proves, in his Glossary at the end of his first Volume. But by *Principes*, and *Optimates*, can only be meant *Nobles*, or *Chief Men*, as the Word *Principes*, *Magnas*, and *Optimas* do always signify in the *Latin Tongue*: That is to say, such of the King's great Officers, *Noblemen*, and *Judges* of the Kingdom, as he pleased to chuse out, and call to his Great Councils, either for their great Wisdom or Estates, to make use of their Advice and Assistance for the making of Laws.

Therefore pray shew me where there are any *Commons* once mentioned in any of these Councils, or any that represented them. Here are indeed particularly mentioned, *Archbishops*, *Bishops*, *Abbots*, *Aldermen*, *Wites*, *Great-Men*, and *Chief-Men*, or *Noblemen*. These were all the Orders of Men that were then the constituent Parts of those Great Councils, *Wittena-Gemotes*. And if the *Commons*, as now taken and understood, were then Members of them, they must be comprehended amongst the *Wites* or *Sapientes*, the *Wise Men*. But that it cannot probably be so, I shall prove, (1.) That most of the *Saxon Laws*, in their Prefaces are said to be made and ordained by their Kings, with the Advice and Assistance of their *Wites*, or *Wise Men* simply, without mentioning any particular Orders of Men whatsoever. And when any Rank or Degrees of Men are particularly mentioned, they are only the same before rehearsed, both *Ecclesiasticks*

and Laicks. (2.) I note, that it cannot be denied, but that in every one of these *Wittena Gemotes*, *Micel Synods*, *Micel Gemotes*, or *Great Councils*, where the Laws are said to be made only by the King, with the Advice of his *Wites* or *Sapientes*, without particularizing any Degrees of Persons; the *Bishops* and *Abbots* for the Spiritual Nobility, and the *Earls*, or *Aldermen* and *Thanes*, for the Temporal, were present at the making of them; as also the Judges, if there were any of the higher Class, other than *Bishops*, *Aldermen*, and *Gereves*, or *Prepositi*. (3.) I note, that it follows from thence, that these all jointly were the *Sapientes*, where there are only *Wites* or *Sapientes* in general named, without reciting any particular Orders or Degrees of Men. Now if you can shew me from as good Authorities as I have here produced, that any of the Commons sat in these Great Councils, at least to represent the Body of the Commons among the Saxons, I will grant, that during the Saxon Government, the Freemen, or Commons of *England*, as now called, and distinguished from the Great Lords, were an essential constituent part of the Common Councils of those Times.

F. To return you as short an Answer as I can, to these Authorities you now cite, I must in the first Place premise, That though I grant all Nobility among the Ancient Germans, Saxons, and Franks, (who were but so many Stirps or Branches of the Gothic Nation) were at first wholly Military; yet it is a very great Mistake, and favours of the Prejudices of the Age and Country we live in, to imagine that anciently there were the same Distinctions between Peers or Noblemen, and Gentlemen, (whom we now call Commoners) as there are now. For if we go but over into *France* or *Germany*, we shall find no Difference there between the greater and the less Nobility; and a Gentleman is as Noble as a Duke, or a Marquis. And if we pass farther, into *Denmark* and *Norway*, from whence most of the Danish Laws are supposed to come, it is certain, that but a few Years ago, there were no such Titles among them as *Earls*, or *Barons*; every Lord of a Town, or District, being that which they call an *Adelman*, or *Nobleman*. And so I suppose it anciently was among the English Saxons. The Word *Athel*, or *Adel*, comprehending (to speak in our present Dialect) all Degrees, as well Noblemen, as Gentlemen; and for this I can give you the Authority of an Ancient Author, viz. *Paulus Warnefridus de gestis Longobardorum*, who speaking of these *Adelmen*, or *Adelings*, tells us, *Sic apud eos quidam Nobiles profapia vocabantur*. So likewise Sir H. Spelman in his Glossary, Tit. *Adelingi*, Tit. p. 9, 10. writes thus, *Anglorum legibus dici pro nobilibus in genere, quod nec dum apud Germanos antiquatum est, qui omnes nobiles Edelmen vocant, a Saxonico Edel pronobili*: And Mr. Selden in his Titles of Honour, makes the Word *Æthelum* to signify all one, either Gentlemen or Noblemen. Besides, Adam of Bremen, and * *Nitardus* likewise, both Ancient Historians, divide the Saxon Nation into Three different Degrees, or Orders, viz. into *Athelings*, i. e. Nobles; *Frilings*, i. e. Freemen; and *Lazzos*, i. e. Villains, Bours, or Bondmen.

Besides which Noblemen, or Gentlemen, there was likewise another Sort of Men, who though of an Inferior Rank, yet as Freemen, and having a considerable Share of the Riches and Strength of the Nation in their Hands, had likewise a Place in the Great Councils, as well as the former. And these were the Aldermen, or other Magistrates of Cities and Boroughs; and in this they resembled the German Diets, whose constituent Members were, according to *Gonterus*, an Ancient German Poet,

Praelati, Proceres, missisque potentibus Urbes.

But since this is a Dispute about the Signification of Words, in what Sense they were used in that Age we are now treating of, it will not be inconvenient to examine from the most Learned Glossarists, the Ancient Signification of those Words which are in Dispute between us. And therefore, since we are agreed about the Meaning of all other Words except these, viz. *Aldermen*, *Thanes*, *Wites*, *Magnates*, *Optimates*, and *Principes*, *Proceres*, or *Primates*, let us examine each of their Ancient Significations. To begin then with the Word *Ealderman*, Alderman, which Word was of a very general Signification: For Sir Hen. Spelman in his Glossary, Tit. *Alderman*, tells us, that there was *Aldermannus Regis, Comitatus, Civitatis, Burgi, &c. de quorum potestate non facile est definire.*

Mr. Lambard renders the Word *Calbopman*, in *Latin Senator*, (i. e. one that had place in the Great Council); and so doth Mr. Somner in his *Saxon Dictionary*; from whence you may learn, that this Word is of a large Signification, and might comprehend such as in latter Times were called Commons, to distinguish them from the Lords or higher Nobility.

Verflegan renders this Word thus; *Calbep*, so written in our ancient Language, is properly an Elder, or Senior; yet an *Calbepman*, which we call now an Alderman, was such in effect among our Ancestors, as was the *Tribunus Plebis* with the Romans, that is, one that had chief Jurisdiction among the Commons, as being a Maintainer of their Liberties. And if so, such Persons must certainly have had a Place in the Great Council as Commoners; and therefore must from the Reason of the thing, signify something more in those Times than an Earl, or great Officer of the King only.

So likewise, that the Word *Thane* comprehended more than the King's Great Feudal, or Military Tenants, may appear by these Interpretations of it, which our Antiquaries have given us. The Industrious Mr. Somner, in his Glossary at the end of the X. *Scriptores*, as also Mr. Selden in his *Titles of Honour*, do both agree in the difference I now make between the Greater and the Less *Thanes*; the former being called *cynniger ðegner Thani Regij*, the other called *medmera ðegnar Mediocres, vel inferiores Thani*, Middle, or Less *Thanes*, who were *Maneriorum Domini. Nobiles minores, Vavasores & nonnunquam liberiteneantes*. With whom Sir H. Spelman in his Glossary agrees, *Thanorum duo erant genera; Majores quos Thainos Regis appellabant, nos Barones Regis, & Thaini Simpliciter, seu Thaini Minores qui idem erant qui Barones Minores, hoc est Maneriorum Domini Nobiles minores, & nonnunquam Liberi Tenentes nuncupantur*. So likewise Mr. Lambard in his Glossary, thus, *Thani autem appellacione viri interdum Nobiles, interdum liberæ conditiones homines, interdum Magistratus atque sepe numero Ministri notantur*. And also in his Perambulation of Kent, saith *ðegen*, was usually taken for the very same that we call now from the Latin word *Gentilis*, a Gentleman, that is, *Evysne, A man well born, or of good Stock and Family*. So that I think nothing can be more evident, than that according to the Opinion of our best Criticks in the Saxon Tongue, the word *Thane* doth not always signify a great Lord, or Baron of Parliament, as he is now called, in distinction to an Inferior Nobleman or Gentleman. And that there were also Burgh *Thanes*, *Thanes* of Cities and Boroughs, will evidently appear from a Writ or Charter of K. Edward the Confessor, which is still to be found in Sir John Cotton's Library, in these words *Cðwaps King Ʒpet Willem Ʒ Leobtan Ʒ flȝp Ʒopte peten Ʒ alle mne Bupȝþener on Lunsen Ʒpenolice*, which Charter with divers other of like nature, confirming the Privileges of that Monastery, were collected by a Monk of *Westminster* called *Sulcardus*, who lived not long after the Conquest.

In the next Place, as for the word *Magnates*, though I grant it there often signifies Great Men or Lords; yet not only such as were Lords or Noblemen by Birth, but as I shall shew you by several Instances, as well before, as after the Normans Entrance, that it also comprehended the Gentry, or Inferior Nobility, and such as were eminent and considerable either in the Countries or Cities, for Interest, Office, or Estate.

As for the word *Optimates*, I know it signifies the better, or best sort of Men; yet not always great Noblemen, or Lords; For in *Monastic. Anglic. Tom. 3.* we read of one *Goda*, who under *Edw.* the Confessor subscribed himself *Optimatem, & Ministrum Regalem*, (i. e. *Thane*.) And lest you should apprehend that *Optimas* should always signify the King's Thane, or Tenant in Capite, de *Fresne* in his Glossary defines *Optimates* to be *Vassalli Barones qui ab ullo Domino ratione Homini unde pendent*; but I shall say more of this word *Optimates*, when I come to speak of the Times not long after William the First.

In the next place, for the word *Proceres*, it doth not only signify Men noble by Birth, but *Isidore* (a Spanish Author in the Gothic Times) in his *Origines, Lib. 9. Cap. 4.* says thus, *Proceres sunt Principes Civium*; and that this word often signified in the ancient English Saxon, the Chief Magistrates of Cities or Burghs, appears by *Alfrick's* ancient Glossary, where these words *Proceres primates, vel primores*, he thus renders *ȝlōppȝ buph papa*. And du *Fresne* in his

In his Glossary, Tit. Alderman.

P. 326.

P. 267.

Spel. Council. in Leg. Canonicis, P. 69.

P. 223.

Sub Effigie Fau-
stine. A. 3.
F. 97. Ex Car-
tulario Cænobi
Westmin.

P. 420.

Glossary also, *Proceres appellabantur qui in Civitatibus precipue Magistratus gerebant.*

P. 605.

As for the word *Principes*, any Man that understands any thing of the *Latin* Tongue, knows that it doth not always signify Princes, or Men Noble by Birth; but any Chief, or Principal Man remarkable by Place, Office or Dignity; and therefore we often read in *Livy*, and other *Latin* Authors, of *Principes Civitatis*; and in this Sense I suppose every Member of Parliament may be reckoned *inter Principes*, among the Considerable or Chief Men of the Kingdom: So that when our ancient *English* Historians, (as well before as immediately after the *Norman* Conquest) do often, after the *Archbishops*, *Bishops*, &c. add, & *ceteri totius Regni Proceres*, & *Optimates*, or *Principes*, as Members of the great Councils of those Times: Yet that these Writers did not then mean what you would understand by these words, only Princes, Earls, or Great Lords, Mr. *Selden* in his Titles of Honour teaches us, when speaking of this word *Principes* (as the most comprehensive of any) says, that tho' *Princeps* in the Singular, were proper to every *Earl* or *Alderman*; yet in the Plural, *Principes* is more often applied comprehensively to others also of less, tho' of special Eminency, such as were *Viri Primarii*, or *Thanes*. And for this he refers us to the Charter of King *Ethelwulf*, (as it is recited by *W. of Malmsbury*, *Lib. 2. Cap. 2.* and *Inglph*) wherein that King granted Tithes, and divers other Privileges to the Church-Abbey of *Malmsbury*, which is said to be done *Consilio Episcoporum*, & *Principum suorum*; as also of *Hen. Hunt.* Who relating the Election of *Harold* the Son of King *Cnute*, expresses it thus; *Fuit magnum placitum apud Oxonford ubi Leofricus Consul, & omnes Principes eligerunt Heroldum.*

P. 682. edit.

Franc.

P. 364. Edit. ibid.

Lastly, As for the word *Wites* or *Sapientes*, there can be nothing in that Word which can limit it only to Men Noble by Birth, since it signifies no more than the King's Great Council of Wise Men or Senators, and might also well refer to the Chief Magistrates, or Representatives of great Cities and Boroughs. For *Du Fresne* in his Glossary tells us, That among the *Lombards*, *Sapientes in Italia appellabant, & Civitatum Cives Primarii, quorum Consilio Republice gerebantur.* Hieron. Rubeus, *Lib. Hist. Raven. Anno 1297.* — *Sed longe antea illud nomen obtinuit in alijs Longobardorum Civitatibus ut colligere liceret ex Ottone, & Acerbo Morena in Hist. Rerum Longobardorum, &c.* Nor is this Authority inconsiderable, since the *Lombards* were derived from the *Goths*, from whom also the *English Saxons* had their Original, and had the like fundamental Constitution, and were governed by much the same Laws.

Tom. 3. p. 700

Vid. Grotius
Prolegomena in
Hist. Gothi-
cam.

But that the Title of *Wites* or *Sapientes*, was often attributed to the *Commons* of *England*, I shall explain to you when I come to treat of the Antiquity of the *House of Commons*, after the *Normans* Entrance; where I shall shew you, that divers Petitions were directed *a tres Sages les Communes*. And sure whoever is chosen by a County, City, or Borough, as their Representative, and is by them thought wise enough to be trusted with their Purse, and to make Laws for them, may very well (I think) be called in Old *English* a *Wite*, or in our modern Dialect, a *Discreet* or *Wise Man*. But let this word *Wites* signify what it will, yet it could never mean here *great Lawyers* or *Judges*, as your *Dr.* will have it; since I very much doubt whether Law was then a Trade or Profession, or not. And that the *Judges* in those Days had not any more Voice in making Laws, than they have now, or any more to do in it than in the bare drawing of them up, I am very well satisfied; since if they had any such Power in those Days, I do not believe our Kings would ever have let them have lost it, since it was so advantageous to their Prerogatives that they should keep it. I could give you divers other Authorities, though of later date, to prove that the *Commons* were often included under the word *Sapientes* in our ancient Statutes and Records; but I refer those for the Times after the Conquest. I beg your pardon for being so prolix already, which the Abuse your *Dr.* hath put upon these words would not permit me to avoid. But now we have cleared most of the Terms in dispute between us, I hope we may proceed with greater Certainty.

Al. Though your Discourse hath been so long, yet since it is so essentially necessary to the right understanding the matter in hand, I am well satisfied; and I shall more fully consider the Account you give of these Words another time.

time. But at present give me leave to tell you, That suppose I should admit, that those Words on which you have now given Interpretation of divers Authors, may sometimes be taken in the Sense you have now put upon them; and that consequently the *Commens* might be represented under some of those general Names; Yet am I not satisfied, how the *Aldermen* and *Magistrates of Cities and Boroughs*, could be included under this Word *Wites*, since in the Au^ctuary to the Thirty Fifth Law of *Edward the Confessor*, 'tis said, *Erant & alie potestates, B. G. p. 67.* *& dignitates, per Provincias, & Patrias universas, & per singulos Comitatus cuius Regni constituta, qui Heretoches apud Anglos vocabantur, Scilicet Barones, Nobiles, & insignes Sapientes, &c.* And *Gregory of Tours, Rodovicus*, and many of the Foreign Ancient Historians, mention *Sapientes* only as Lawyers, Counsellors, Judges; and among the modern Foreign Lawyers, *Hottoman* and *Calvin* say expressly they were such. But perhaps not of the Inferior Rank, no more than the *Saxons Sapientes* were, of which their *Witena gemoter* only consisted. And we have at this Day the *Judges*, and *King's Council*, and other great Lawyers, that sit in the Lords House, and are assistant to the Parliament, when there is Occasion. Nor have you yet brought any Proof, that the Cities or Towns then sent their Representatives to the great Councils in the *Saxon Times*, by this, or any other Title. But as for the Knights of Shires, though I grant the Treatise called *Modus tenendi Parliamentum*, mentions such Persons to have been present in Parliament in the Time of King *Ethelred*; yet by that Word Parliament, so often used by the Author of that Treatise, and divers other Circumstances, it may be easily perceived that the Author lived but about the Time of *Edward III.* or *Richard II.* as *Mr. Selden* in his Titles of Honour, and *Mr. Pryn* in his Animadversions to *Sir E. Coke's Fourth Institutes*, have very fully proved; so that admitting that your *Thanes*, or Lords of Towns, did then appear in those Councils for themselves and their Tenants, yet could they not be properly said to be their Representatives, because (as I told you before) they were never chosen by them; whereas now the ordinary Freeholders, of Forty Shillings a Year, and the Freemen and Inhabitants in Cities and Towns, have the greatest Share in the Election of Knights, Citizens and Burgeffes.

And as for those *Thanes* you mention, they are those under whom they claimed, owed their Estates wholly to the Grants of former Kings, and held their Possessions from them by some Tenure or other. And by Virtue of this Tenure it was, that all the Lands of *England* were liable, even those that belonged to the Church, to those Three Services, anciently called *Trinoda Necessitas, viz. Expeditio, Castelli, & Pontis extructio*, that is, Military Service against a Foreign Enemy, and the Repair of Castles and Bridges; and subject to the common Services of the Kingdom. And that the Earls and Chief *Thanes* did hold their Lands by Knights or Military Service, appears by the Reliefs of the Earls and *Thanes*, express in the Laws of King *Cnute*, in *Sir H. Spelman's Councils*. So that if all the Persons who held those Lands, owed them wholly to the King's Bounty, it seems plain to me that they must likewise owe their Places in the great Council to the same Original.

F. I think what you have now farther urged will be of no great Moment against my Opinion; for as to the Authority you bring from the Addition to that Law of *Edward the Confessor*, it is plain by the Word *Barones*, that it was added long since that Time, that Word not being commonly in Use, till some Time after the *Norman Conquest*. But letting that pass, it is plain by the rest of the Law, if you would have been pleased to have read it out, that these *Heretoches* (here called Barons) were no other than ordinary Gentlemen, or *Thanes* (which then answered the Word Barons. And these (as this Law it self expressly tells us) were chosen by all the Freemen in the *Folcmote*, or County-Court. And therefore though I grant they might be Men of Estates, yet there was no Necessity of their being Lords, or Noble by Birth; nor is it likely that the People would have chosen their Earls, or any other of the like Order, when they had sufficient Choice of *Thanes* or Gentlemen in their own Countrey, to command the Military Forces of it. And though it is true these Gentlemen are called Nobles, and remarkable Wise Men, yet this (according to your own shewing) doth not exclude others, and those of a far different Profession, *viz. Counsellors, Lawyers, and Judges*, all which, you suppose had then Places in the Great Council, as they have now in the Lords House. And if this Word might comprehend

both Swordmen and Lawyers, I cannot see why it may not also take in the better and richer sort of Citizens and Magistrates, who in that Age, were elected by their respective Corporations: And I have already proved that these were called *Sapientes* in other Countries; and I see no reason why they may not have been called so here too. But that the King's Judges and Counsellors could have no Votes in the *Saxon* Great Councils, I have already given a sufficient Reason to the contrary.

I shall now farther shew you, That the Cities and Boroughs in the *Saxon* Times being so much more numerous and considerable than they are now, must needs have had (according to the Custom of those Times (a considerable Share in those Great Councils, since in them consisted a great Part of the Strength and Riches of the Kingdom; and were many more than they are at this Day; for *Bede* tells us in the beginning of his History, *That there were in England long before his Time, Twenty Eight Famous Cities, besides innumerable Castles, and walled Towns of Note*; many of which, though now extremely decayed, or quite ruined, were then very considerable, the greatest and richest Part of the Nation inhabiting in those Times for the most part in Cities, or great Towns, for their greater Benefit or Security; and the greater Part of the Lands of *England* in the *Saxon* Times, and long after, lay uncultivated, and over-run with Forests and Bogs: So that the Inhabitants of those Cities and Boroughs being then so considerable for Estates in Lands, as well as other Riches, could not be excluded from having Places both in the *British*, or *Saxon* Great Councils. What Man of Sense can believe, that the Ancient and Potent Cities of *London, York, Canterbury, Lincoln, &c.* should ever be excluded from having any Hand in the Great Consultation about giving Money, and making Laws, and for the Publick Defence of the Kingdom in the *Saxon* Times, any more than they are now? And therefore we find, that in all the Kingdoms of the *German, or Gothick* Original, the Chief Cities and Towns have still sent Deputies to the Diets, or Assemblies of Estates, as I said but now.

In the next Place, though I do not assert, that there were Knights of Shires before the Conquest; yet I am not convinced that there were none. For though I confess the Treatise you mention, appears to have been written since the coming in of the *Normans*, yet the Substance of it must have been much older than the Times of *Edward III. and Richard II.*; or else certainly King *Henry IV.* or his Chancellor for him, would never have been at the Trouble of transmitting a Copy of this said *Modus* into *Ireland* under the Great Seal, which is thought to in-croach so much on the Prerogative, had he not been very well informed of the Antiquity, as well as Authority thereof. And therefore it might very well be written about the Time of *Henry III.* from some Ancient Historians and Records, not now Extant, though the Copies we have of it, may be of no longer Standing, than the Time Mr. *Selden* mentions.

But admitting that there were no Knights of Shires before the Conquest, and though the *Thanes* (who I suppose made the greatest Figure in the *Wittena Gemotes*) were not Earls, or chief *Thanes*, that is, of the Greater Nobility, yet they were great Freeholders, and though Commoners, yet Gentlemen, and of the Lesser Nobility, in the same Sense as Gentlemen, or Knights of Shires are now. And though not elected by the Countries, yet might be as well esteemed their Representatives, as they are now of Freeholders under *40 s. per Annum*, Leaseholders and Copy-holders for Years, who have no Votes at the Election of Parliament Men; whereas these *Thanes* were then the chief (if not the only) Possessors of all the Freehold Estates in the Kingdom.

Nor is it any material Objection to say, that these *Thanes* might at first owe those Estates to the Grant of the First *Saxon* Kings, and might also after a Sort hold their Estates of them as Heads of the Commonwealth, by such Services as were settled by Publick Laws; yet does it not therefore follow, that they owed their very Right of coming to the Great Council wholly to the King's Favour. For in the first Place it is to be considered, that though the First *Saxon* Kings conquered this Island from the *Britons*, yet those that assisted them being only Volunteers, the Chief Officers or Commanders of them might not only deserve, but also capitulate for their Shares in the Land so conquered. And these being given out by the King, according to each Man's Quality, Condition, or Desert, might

Vi. Hollinsh.
Chro. p. 192,
193. where
he sufficiently
proves this As-
sertion from
divers Ancient
Authors.

might constitute those who were called the King's *Thanes*; as those who held likewise under them, were the Middle *Thanes* or Vassallors; supposing (till you can prove the contrary) that these had Places in the Great Council, as well as the other; and you might as well argue that they could have no Place there, but by the Favour of their Lords. Whereas I have already proved, that an Estate of Five Hides in Land, of whomsoever holden, made a *Thane* or Nobleman of the Inferior Rank: And we find by the same Laws of King *Athelstan*, his *Weregild*, or Price of his Head, was valued but equal with that of a Mass *Thanes* or Priest, (*viz.*) at Two Thousand *Thrymsfar*. So that a sufficient Estate in Land, did not only make a Man a Gentleman, but also give him a Place in the Great Council. And there were besides all these several *Alodarij*, who held their Lands, discharged from all Services, and could sell or dispose of them without the Consent of the King, or any other inferior Lord, and are those often mentioned in *Domesday-Book*, *qui potuit ire cum terra quo voluit*. Nor is your Argument conclusive, That because in those Times, as well as now, all Lands were held either mediately or immediately of the King, and were chargeable with those Three general Services you mention for the Publick Safety and Good of the Kingdom; that therefore not only all Mens Civil Properties, but also their Right of coming to the Great Councils, must wholly depend upon the King's Will: Since I have already proved, that the first *Saxon* Kings by their Conquest of the Kingdom, could not acquire the sole Property of all the Lands thereof to themselves, though they might be made use of as Publick Trustees, to distribute them according to those Mens Qualities and Deserts, who had helped them in the Conquest. So that when they were once possessed of such Estates, they had immediately thereupon a Right to a Place in the Great Council, the Burthen of the Government lying chiefly on such as had Estates in Land.

And that many others besides the Kings *Thanes*, or Great Lords, had Places in the Great Council of those Times, appears as well by the Name of *Mycel Synods*, or *Wittena-Gemots*, which are rendred by our Ancient Glossarists *Numerosa*, or *Populosa Conventio*; as also the Titles, and Conclusions to divers of the Titles of those Great Councils in the *Saxon* Times, where are often mentioned after the *Comites, & Proceres Terræ, aliorum fidelium infinita multitudo*, which must certainly take in many more than the King's *Thanes*, Judges, or other of his Great Men, who were then but a few in Comparison of all the rest of the Freeholders of *England*.

M. I will not longer dispute the Probability of what you say; all the Difficulty lies in the Proof of the Matter of Fact. For in the first Place I deny that any other of a less Degree than the King's *Thanes*, or Chief Tenants, had any Places or Voices in the old *English* Councils. Nor can you find (as you your self are forced to confess) in our *Saxon* Laws, or Ancient Historians of those Times, any Representatives of the Common People mentioned; such as are now, much less Citizens or Burgeesses for any City or Borough in *England*. And therefore what you say concerning the Riches or Power of the Cities and Towns before the Conquest, though perhaps it might be true, yet doth it not therefore follow, that they must then send their Representatives to the Great Councils. Nor is it any Argument to prove that they did, because great Cities and Towns do or did lately send Deputies to the like Assemblies in other Countries, since our Government might not only Originally differ in that from theirs, but that also the sending of those Deputies might be granted by some later Princes, long since the Time of the first Beginning of those Kingdoms, and I do believe will prove so, if closely look'd into.

F. I think your Reply hath no more Weight in it, than what you have already urged: For in the first Place it lies upon your Side to prove, that none but the Kings or Chief *Thanes*, had any Places in the Great Councils of those Times; and when you can prove that, you may do something.

But what I have now brought to prove the great Antiquity of our Cities and Boroughs in *England*, is not so little to the Purpose as you would make it; since it confirms that Right of Prescription, which all Ancient Cities and Boroughs in *England* do claim of sending Members to Parliament; and therefore pray see what Mr. *Lambard*, a Person whom all the Learned own extremely knowing in the *English* *Saxon* Government, tells us on this Subject, in his *Archeon* in these Words.

Page 255, 257,
8cc.

“ That

“ That whereas in the Beginning of the Laws, (*viz.* those made by the *Saxon* Kings he there mentions) all the Acts are said to pass from the King and his *Wise Men*, both of the Clergy and Laity, in the Body of the Laws, each Statute being thus; *And it is the Advice of our Lord, and his Wise Men.* So as it appears that it was then a received Form of Speech, to signify both the Spirituality, and Laity (that is to say, the Greater Nobility, and the Less, or *Commons*) by this one Word *Witena*, i. e. *Wise Man*.

“ Now as these written Authorities do undoubtedly confirm our Assertion of the Continuance of this manner of Parliament, so is there also unwritten Law or Prescription, that doth no less infallibly uphold the same. For it is well known, that in every Quarter of the Realm, a great many Boroughs do yet send Burgesses to the Parliament, which are nevertheless so Ancient, and so long since decayed, and gone to Nought, that it cannot be shewed that they have been of any Reputation at any Time since the Conquest, and much less that they have obtained this Privilege by the Grant of any King succeeding the same. So that the Interest which they have in Parliament groweth by an Ancient Usage before the Conquest, whereof they cannot shew any Beginning; which Thing is also confirmed by a contrary Usage in the self same Thing; for it is likewise known, that they of Ancient Demesne, do prescribe in not sending to the Parliament; for which Reason also, they are neither Contributors to the Wages of the Knights of Shires, neither are they bound by sundry Acts of Parliament, though the same be generally Penned, and do make no Exceptions of them. But there is no Ancient Demesne, saving that only which is described in the Book of *Doomsday*, under the Title of *Terra Regis*, which of Necessity must be such as either was in the Hands of the Conqueror himself, who made the Book, or of *Edward* the Confessor, that was before him. And so again, if they of Ancient Demesnes, have ever since the Conquest prescribed not to elect Burgesses to the Parliament, then (no doubt) there was a Parliament before the Conquest, to the which they of other Places did send their Burgesses.

From whence we may conclude, that the Learned Author did not only believe that the Lords, but that also the Inferior Nobility, and Representatives of Cities and Towns, were included under the Word *Wites*, and also that these Places claimed that Privilege by Prescription, and not by Grant of any King since the Conquest, or before.

M. I shall not deny but Mr. *Lambard* was a Learned Antiquary, yet there are others, more in Number, and perhaps of greater Learning, who do suppose, that no Cities or Boroughs sent Burgesses to Parliament, but since the Conquest; tho' I confess the Time is not exactly agreed on; but whenever they began to appear there, it is certain they could have no Right of coming, but from the King's Summons or Grants; since none but such Cities or Towns, that held of the King *in Capite*, had anciently any Place in those Assemblies; nor of them neither any other, but those whom the King pleased to call. And from thence proceeds that great Variety we find in the List of those Towns, which send Members to Parliament. But I shall omit speaking any Thing farther of this at present.

But as for those middle, inferior *Thanes* or *Vavassours* (as they were afterwards called) whom you suppose to have made so great a Figure in the *Saxon* Great Councils, I do not believe that they had any Votes there; and I hope I shall be able to prove to you by and by, that none but the King's Tenants *in Capite* appeared in those Meetings, from the Time of *William* the Conqueror, to the 49th of *Henry* III. Now if it be true (as you suppose) King *William* made no material Alterations in the constituent Parts of the Great Council of the Kingdom, after his Conquest of it, it will likewise follow, that the same Sort of Persons, *viz.* Tenants by Knights Service, were the only Members of it before the Conquest too. But if you have any express Authorities, out of our Ancient *Saxon* Laws or Histories, to prove that the Commons appeared at the *Witena Gemotes* in the *Saxon* Times, pray let us see them.

F. I shall perform your Command immediately; but in the first Place give me leave to tell you, that what you have said concerning Cities and Towns not sending Burgesses to Parliament, till after the Conquest, is a great Mistake, built upon a false and precarious Hypothesis, that they all held *in Capite* of the King; the

the contrary of which, I shall make out, when I come to treat of that Question. So likewise is it as precarious, that none but the King's Tenants *in Capite*, had any Votes in our Great Councils, in the Times immediately succeeding your Conquest, till the 49th of Henry III. and that therefore it must have been so before the Conquest. For as I own that King William made no material Alteration in the Government of the Kingdom, after his Entrance, so I likewise affirm, that as well after, as before that Time (if not Knights of Shires, yet) all the *Thanes* or *Barons*, i. e. great *Freeholders* of England, had Places in that Assembly before the 49th of Henry III.

But to proceed to the Authorities you desire; I shall begin with the First, and most Ancient General Council we have left us in the Saxon Times, viz. that which was held at Canterbury A. D. 605, by King Eihelbert, not long after the Settlement of Christianity in this Island; which is Recorded by Sir H. Spelman in his *British Councils*, in these Words; *An. Incarnationis Dominicæ 685. Eihelbertus Rex in file Roboratus Catholica una cum Berta Regina filioque ipso Eadbaldo, ac reverendissimo presule Augustino, ceterisque optimatibus Terræ Solemnitatem Natalis Domini Celebrant Cantuarie; Convocato igitur ibidem Communi Consilio tam Cleri quam Populi*; Whence you may observe that the People then made a considerable part of the great Council from the very Beginning of the Saxon Times.

Al. Pray, Sir, will you give me Leave to Answer your Questions, one by one as you go, for fear I should not only forget them, but also tire you with too long a Speech. In the first Place therefore give me Leave to tell you, that you are very much mistaken to suppose, that by the Word *Populus*, is here meant the common People, or Vulgar; Whereas, when *Clerus* and *Populus* are used together, in our Ancient Writers of those Times, it signifies no more than a Common Council of the Clergy, and People or Laity, and not the Common People; for then the *Lords*, or Great Men would have been quite left out of this Council, as certainly they were not; and so when *Clerus*, and *Populus*, are used together, and thus contradistinguished, then they are expressive of Two different Estates or Conditions of Men or Christians, the Clergy, and Laity or secular Men; and those were the *Optimates Terræ*, the chief Men of the Land before expressed. Neither was this Council held under a sole Saxon Monarch, but under Eihelbert King of Kent only; and that but Eight Years after Augustin's coming hither, and above Two Hundred Years before the Seven Kingdoms were united into one Monarchy.

E. I am not at all concerned at this Answer, since I can prove, that by the Word *Populus* must be here understood somewhat more than Kings, Noblemen, and Judges, viz. the Representatives of the Commons likewise; or else the Saxon *Witena-Gemotes* were not what their Titles speak them to be, Common, or General Councils of the whole Kingdom; that is, of all the Estates or Orders of it there, but only a Convention of the Bishops and Great Lords. And therefore if the Word *Clerus* did then comprehend all the Clergy, both Superior and Inferior, i. e. as well the Bishops as Abbots, Priors, Deans and Clerks, for the Secular Clergy, and Cathedral Chapters, &c. I pray give me a Reason why the Word *Populus*, when put alone, must be wholly confined to your *Earls*, or Chief *Thanes*, and may not also take in the Middle or Less *Thanes*, Freeholders, or Lords of Townships, and the Representatives of Cities and Borough Towns; and why not with as much Reason, as that the Word *Populus* amongst the Romans, took in the whole Body of the People of Rome, both *Patricians*, and *Plebeians*, when assembled in their *Comitiis Centuriatis*, to make Laws, or create Magistrates. The rest of your Argument is not very material; for though I grant this Council was held before the Heptarchy was united into a Monarchy, yet I think it is very easy to prove, that as all the Saxon Kingdoms consisted of several Nations of the same Language and Original, so were they likewise under the same Form of Government: And that Councils consisted of the same constituent Members, as I shall prove to you from the Kingdom of the *West Saxons*, from which was the Foundation of our present English Monarchy. And for this I shall give you the Authority of Will. of Malmesbury, and H. Huntingdon, (who 'tis highly probable) had seen the Ancient Histories and Records of those Times) and they both agree in the Relation of the Deposition of Sigebert, King of the *West Saxons*, for Tyranny and Cruelty, Anno 754; the Words are remarkable, which pray

read; *Unde in Anno secundo ipsius Regni congregati sunt Proceres, & Populi Totius Regni & provida deliberatione, & unanimi consensu omnium expulsi sunt a Regno & Kineuulfus factus ex Regio sanguine electus est in Regem*; where you may observe a plain Difference made between the Higher Nobility, here called *Proceres*, and the Representatives of the People, here stiled *Populi*; as also from another Authority of a Great Council, held under the same King *Æthelbert*, as it is mentioned by *Roger Hoveden*, Domestick to King *Henry II.* in the Second Part of his Annals; where among the Laws of King *Edward the Confessor*, and which he writes to have been confirmed by King *William I.* you will find under the Title *de Apibus, & de aliis minutis Decimis*, (which are there said to be given to the Clergy by former Kings, and particularly by this King *Æthelbert*) these Words; *Hæc enim Sanctus Augustinus predicavit, & docuit & hæc concessa sunt a Rege, Baronibus & Populo*. So that if *Populus* here doth not signify an Order of Men, distinct from the Barons or Great Lords, it would have been a Tautology with a Witness.

M. I must confess, if this Authority you now urge, had been as Ancient as the Time to which it is ascribed, it would be of some Weight; but it appears by this Word *Baronibus* (not used in *England* till after the Conquest) that it was added long after that Time (by some ignorant Monk) to the Confessor's Laws, and therefore will not prove that for which you bring it, *viz.* That the *Vulgus* understood for the People or Commons, in the Sense they are now taken, had any Place in the *Saxon* Great Councils.

B. A. A.

Page 297, 298.

But make the most of it, this was but the Confirmation of a Law made by King *Æthelbert*; but how, and by what Words the Legislators were expressed near Five Hundred Years after the Law was made; or how they were rendred in *Latin* after the coming of the *Normans* transiently, and without Design to give an Account of them, cannot be of much Validity to prove who they were; and that the Laws of King *Edward* were made, or at least translated into *Norman Latin*, after the *Norman* Conquest, appears by the Words *Comites*, (besides the *Barons* already mentioned) *Milites, Servientes, &c.* all *Norman* Words (used in those pretended Laws) and not known here, till their Coming hither. He that will assert any Thing from a single uncouth Expression in one Case, and upon one Occasion only, brings but a slender Proof for what he says; so will any Man think, (because 'tis said in one of King *Edward's* Laws, (and perhaps no where else, concerning this King's Coronation) *quod debet in propria persona coram Regno, & Sacerdotio & Clero, jurare ante quam ab Archiepiscopis, & Episcopis Regni coronetur*;) That the Priests were not Clergymen, nor the Clergymen Priests; and that the Archbishops and Bishops were neither. Many other uncouth Expressions do often occur in the old Monks, which are to be interpreted according to the common Usage and Practice of the Times in which they are delivered. And therefore seeing before the Time of the Conquest, and for Two, or near Three Centuries of Years afterward, the Commons (as at this Day understood) were not called, nor did come to Great Councils or Parliaments, as I shall prove when I come to speak of those Times: So that by *Barons* must be here meant the Great Barons, and by *Populus*, the *Communitas Angliæ*, or which was then all one, the *Communitas Baronum*, the Less Barons, or Tenants *in Capite*; and the Sense of the Words is farther confirmed by several undeniable Authorities; wherein, by the *Communitas Populi*, must be understood not the Community of the People or Commons, but the whole Body of the less Tenants *in Capite*.

But to give you an Answer why the Word *Populus* could not comprehend all Sorts of People among the *Saxons*, as it did among the *Romans*, but only the Nobility, (who were then, properly speaking, the only Freemen) is this, that none but the Nobility possessed any Lands in Fee-simple; all the rest of the meaner Sort of People (then called *Cheorl Folk*) holding theirs in Villanage under their Lords or *Thanes*, being no better than meer Villains, or Cottagers, and who were all bound to the Good Behaviour, every Tenth Family being bound one for another, in the *Sheriff's Torne*, or Court of *Franc-Pledge*, under their Head, or Tenth Man, called the Tything-Man, who was to answer for them. So that the Commons of *England* were not such a Free People, nor had any Share in the Government, as some suppose, there being, I believe, no such Persons as our Yeomen or Farmers in those Days.

F. I shall, I hope, take off this Objection against my Signification of the word *Populus*. Perhaps this Law might very well be understood from some old Copy of King *Athelbert's* Laws, not now extant, and in which there might be the Word *Thanes*, instead of *Baronibus*, which is but a Transcription of it, in the Sense in which it was used not long after the Conquest.

Nor is it true which you affirm, that the Word *Barones* was never in use before the coming in of the *Normans*, in ancient Charters: as I shall prove to you by this Charter of King *Edgar*, to the Abby of *Westminster*, containing a Confirmation of their ancient Charters and Privileges, collected by the aforesaid *Sulcardus*, a Monk of *Westminster*, as it is to be found in the Cottonian Library; the Charter itself is long, but concludes thus, *In Conspectu habito infra Basilicam Westmonast. Presidente Jecum Filio suo Edwardo, & Archiepo Dunstano, & universis Episcopis & Baronibus suis*; where you may see that the Word was not unknown before the Time of *William I.* And I could give you more Instances of other Kings Charters, where the same Word is used before the Conquest, were it worth the while to trouble you with them.

And so likewise *Populus* for *People*, or *Folk* in the *Saxon*; Yet take it (as you suppose) to have been writ not long before the Time *Hoveden* writ his History, (which was above 80 Years before the 49th of *Hen. 3.*) This Author, or whoever else added this Passage to this Law about *Tynnes*, did then suppose, that according to the Custom then used, the *People* or *Commons* had Representatives in those Assemblies; which I shall prove from your own Sense of these Words; for if the Word *Populus* signifies here another Sort of Men different from the chief *Thanes* or *Lords*, then this Word *Populus* must necessarily signify some that were *Commons*, and not *Lords*, by your own Concession, and who also must represent others besides themselves. But it is highly improbable, that by this Word *Populus* should be meant the *Communitas Anglie*, or the *Communitas Baronum*; for then if the Word *Baronum* would have included all the *Tenants in Capite*, both great and small, to what Purpose should the Word *Populus* have been added at all? Therefore I am so far from believing this way of expressing the several Estates of the Kingdom, to have been a Monkish Blunder, (as you suppose) that it was rather a common and ordinary way of Expression among the Writers of those Times, as well in Records as Histories, who then very well knew the *People* or *Commons*, to be an Estate, or constituent Part of the Common Council of the Kingdom, quite different from the *Lords*; and in which Sense it is recited in an ancient Charter of King *John*, that he being divorced, the new Queen was crowned, *de communi assensu & concordia Voluntate Archiepiscoporum, Episcoporum, Comitum, Baronum, Cleri & Populi totius Regni*; Where by *Clerus* is plain must be meant the inferior Clergy represented by their Proxies in this great Synod or Parliament; and by *Populus* was understood the *People* or *Commons*, likewise present by their Representatives; or else the Words *Clerus* and *Populus* had been idle Tautologies in this Record. And in the like Sense it is also used by *Matt. Paris*, in the 9th of *Hen. III.* *presentibus Clero, & Populo, cum Magnatibus Regionis*; Where this Author makes a plain Distinction between the *Magnates*, and the *Populus*; which had been altogether in vain, if the Word *Magnates* would have comprehended all your greater or less *Barons*, or *Tenants in capite*.

But I shall in the next Place proceed to that great Synod, or Council, that was called by King *Edward* the Elder, *Anno Dom. 905.* and is mentioned by *Simcon* of *Durham*, and other Authors quoted by Archbishop *Parker*, the Compiler of the *British Antiquities*, in these Words, *Plagmundus Cantuariensis Archiepiscopus, una cum Rege Magnifico cognominato, Edwardo seniore Consilium Magnum Episcoporum, Abbatum Fidelium, Procerum & Populorum, &c. convocavit.* Which Synod, or Council, was called to divide the large Dioceses of *Winchester* and *Sherburn* into Five other (as I have already told you); where you may plainly see the Words *Fidelium & Populorum*, put distinct from the Word *Proceres*, if we take that Word to signify only the greater Nobility.

I shall now conclude with a few Words in Reply to your Answer, why the Word *Populus*, could not among the *Saxons* take in all Sorts of *People*, as well as amongst the *Romans*; for I cannot take it as a satisfactory Answer,

for these Reasons: 1. Because, tho' I should grant that the vulgar Sort of People were greater Slaves than they are now, and that they had no hereditary Properties in their Estates, but at the Will of their Lords; yet does it therefore follow, that all the Freemen of the Kingdom were Noblemen or Gentlemen, or else Villains, as now understood? Since *Nitardus* tells us in the Place abovementioned, that there were Three Sorts of People among the Saxons, *Edelingi, Frilingi, & Lazzi*, i. e. Gentlemen or Noblemen, Freemen, and Slaves or Villains; and this middle Sort of Men might also possess Lands in *Allodie*, or Free Tenure, tho' they did also depend upon greater Men for Protection, and seem to be those who were after the Conquest called in *Doomsday Book, Commendatii*, i. e. such, who tho' they lived under the Protection, and within the District of some great Man, Lord or Patron; yet as *Sir Hen. Spelman* tells us, were free both as to their Persons and Estates, not as sworn to, or holding of any but the King. And besides these there were also great Bodies of Men in Cities, and Burgh Towns, and those very considerable for Estates and other Riches, who tho' not nobly born, and yet being Freemen, it was but reasonable that they should have their Representatives in Parliament, as well as the former.

B. P. H.
Pag. 56.

M. I shall not at present dispute the Matter farther with you concerning the Word *Populus*, since I shall refer speaking more about it, till I come to the Times after the Conquest. And therefore to return to the Matter in hand; had you but read a little farther in the same Leaf, in the Author you have cited, you might have found who they were, whom King *Edward* the Elder called to this Council; The Words are these, *Edwardus Rex Synodum Prædictam Nobilium Anglorum congregavit cui præsidebat Plegmundus*. Here your own Author tells us in few Words, the meaning of a long Title of this Synod now mentioned, viz. that the Bishops, Abbots, *Fideles, Proceres, & Populus*, were all *Nobiles*, Noblemen, that is, the Ecclesiasticks and Laics, or the Bishops and Lay-Nobility, as I shall make more evident hereafter; and not the *Vulgus*, Commons, or ordinary Sort of People.

B. A. P.
Pag. 70.

And to this Effect *Malmsbury*, and the Manuscript in the *Bodleian Library* cited by *Sir William Dugdale*, and *Mr. Somner*, from the Treasury of the Records and Evidences of the Church of *Canterbury*, cited by *Sir H. Spelman*, do all report of this very Council, That *Edwardus Rex congregavit Synodum Senatorum Gentis Anglorum cui præsidebat Plegmundus*, &c. That King *Edward* convened a Synod of the Senators (in the Saxon, Aldermen, of the *English Nation*) that is, such as were usually called to such Councils, which were only the Nobles, and great Men, for ought yet appears from this Instance. But what if after all, there was never any such Synod called, and consequently no such Title to it? For it was said to have been assembled, by reason of a chiding Letter from Pope *Formosus*; now this *Formosus* died *Anno 895*. that is, Ten Years before this Council was supposed to be called.

F. I see this Authority galls you, therefore I do not blame you to do what you can to be rid of it; but I shall not give it up for all that. For that this Word *Populorum*, then signified all the Lay-Persons, who were actually Noblemen, that is, of the greater Nobility, I think is a great Mistake. For to what Purpose are all these different Words here heap'd together, since the Word *Proceres* had done as well alone in your Sense, and at once comprehended all those Lords or Noblemen, that you would only have to be there? But the Word *Nobiles* did not in those Times, neither doth at this Day in any other Countrey but *England*, signify none but great Lords, Barons, or Peers; since in *Germany* and *France*, and other Countries, every private Gentleman is *Nobilis*. And I think the Middle or less *Thanes*, might then as well be called *Nobiles*, as the great Ones. And the *Aldermen*, or other Magistrates of great Cities and Towns, might also very well be stiled *Nobiles, ratione Officii*, for the time they acted in that Employment, and might also deserve the Name of Senators, as well as the greater *Aldermen*, or Earls: And if there were no other Lay-Men, but your greater Sort of *Aldermen*, then what becomes of your Chief, or Kings *Thanes*, which you your self grant were constant Members of those Councils? Nor indeed doth the Word *Senator* only signify such who were Noblemen by Birth, since among the *Romans* there were Senators of the *Plæbeian* as well as *Patrician* Order; as any Man who hath

but

but read *Lucius Florus*, may quickly see. But as for your Exceptions, That there was no such Council, because Pope *Formosus* is said to have died Ten Years before this Council was called; it is a bold Assertion to annihilate a whole Council, because of the Mistake of the Date, or Time of its meeting, or perhaps in the Name of the Pope, or King then reigning; especially when it was assembled upon so remarkable an Occasion, as the erecting of these new Bishopricks, which all our Historians ascribe to this Council.

But I shall now proceed to another Authority, and that is to the great or Common Council held at *Winchester Anno 853*. where you will find in Sir *H. Spelman's* Councils, as also in *Ingulphus's* History, that after the Bishops, Earls, and other great Men, or *Thanes*, who subscribed to the Law of Tythes, granted by way of Charter there mentioned, wherein these following Parties are there mentioned, *Aliorumque Fidelium infinita multitudo qui omnes Regium Chirographum laudaverunt, Dignitates verò sua nomina subscripserunt.* And the learned Commentator upon King *Alfred's* Life, published in *Latin* at *Oxford*, is so well satisfied, that the Commons were meant by this Expression, that he hath this remarkable Observation upon this King's granting of these Tythes: *Bis videtur Rex Decimas Ecclesiæ concessisse. Primum Anno 844, Et 2º vero 855. vel ut alii 854, è tota Regione, Et cum Assensu omnium Nobilium, Et totius Populi.* Where this Author rightly supposes, that the Words at the Conclusion of this Council, did comprehend the Consent of the People or Commons, as well as of the Lords, or Noblemen. Or else this reciting of this Word *Populus*, as distinct from the *Nobiles*, had been altogether in vain. Pag. 350.

So that tho' I do not affirm, that the meer Vulgar, or *Plebeian* Sort of People did appear personally in the great Council of those Times, any more than they do now, yet they were there by their Representatives, *viz.* either by Knights of Shires, as now, or else the chief *Thanes*, or Freeholders of the Kingdom; as also by the Aldermen, or chief Burgeßes of great Cities and Towns, who I suppose did then represent those Politick Bodies, since all Men could not appear there in Person.

But I shall give you another Authority out of the same Author, *viz.* Archbishop *Parker's* *British* Antiquities, where when he relates the calling of the Council of *Canne*, for the turning of Married Priests out of Monasteries, and Cathedral Churches, and putting Monks into their Places; He tells us a remarkable Accident that then happened, *viz.* The falling down of a Room where the Council was assembled: So that there fell together all of a sudden, (pray take the Words themselves out of the Authors there cited) *Præfules, Proceres, Equites, Nobiles, pariter Et Ignobiles Corruerunt.* So that you see here were other Sorts of Men present in this Council, beside the *Præfules*, (i. e. Bishops and Abbots); and the *Proceres*, (i. e. the Earls and chief *Thanes*), *viz.* the Knights, or *Inferior Thanes*, Noblemen or Gentlemen; as also *Ignobiles*, those that were not Noble by Birth, such as were the Representatives of Cities and Boroughs. And of this Opinion the Archbishop himself seems to be; for at the End of this Relation he makes this Remark; *Sed nec hujus domus in quâ omnium Ordinum, tam Conspicui Clariq; viri, Consulto Conveniunt tam repentina ruina ope Diabolica carere potuit;* where by *Omnium Ordinum*, he must certainly mean the Three Estates of the Kingdom, in the same Sense as the Word *Ordines* is used by *Camden*, and other *Latin* Writers, who call our Parliament *Conventus Ordinum*, that is, the Assembly of Estates. Pag. 87.

M. I pray give me leave to answer this Authority before you proceed farther; I must beg your pardon, if I cannot believe that all the Persons whom the Historian relates to have perished by this Fall of the Council Chamber, to have been all of them actual Members of that Assembly, since there might have been there divers Persons, who tho' of an inferior Rank, might have been present as Auditors or Lookers on; it not being then the Custom to hold those Councils so privately, as we do now; so that divers of the common or ordinary Sort of People, called here *Ignobiles*, and perhaps of the inferior Gentry too, being there, might all partake of this common Ruin, and so pay dear for their needless Curiosity.

F. I must beg your Pardon if I do not assent to your Opinion in this Matter; for I cannot believe (unless you can shew me very good Authority for it) that ever the common People or *Vulgus*, in the Sense you take them, were let in only to gaze at such Assemblies. For what Room could have contained so great a Crowd?

and if they were in those Days so great Slaves, as the Gentlemen of your Opinion please to make them, it is not likely that they should be admitted to crowd into the Great Councils then, any more than now, when you allow them more Liberty, and greater Privileges than they then enjoyed. And therefore I think I may very well stick to the Archbishop's Opinion, who supposes them to have been the whole Assembly of the Three Estates, who were all involved in this Ruin.

But letting this pass, I shall now give you an Authority of a Great Council held under King *Ethelred*, which will further confirm our Sense of the Word *Populus*; which Council you may see in the First Volume of *Monasticon Anglic.* contains a Concession and Confirmation of divers Privileges to the Monastery of *Worcester*, in these Words; *Hæc decreta sunt Sigerichi Archiepiscopi in placito coram Rege Ethelredo, & Eboracensi Archiepiscopo, & omnibus Episcopis, Abbatibus Regionis Britanniæ, seu Senatoribus, Ducibus, & Populo Terræ*: Where it seems plain to me, that the *Populus Terræ* are here put as a distinct Order of Men from all the rest aforegoing.

Vol. 1.
Fol. 92.
Col. 2.

Vol. 619.

Bromton, Fol.
92.

To come now to the Time after the *Danish* Invasion, and the Settlement of the Crown upon King *Cnut*, who after he was made King, partly by Conquest, and partly by Election, yet altered nothing of the Ancient Constitution. And therefore *Florence of Worcester* tells us, that *Anno 1017*, being the First Year of his Reign, he divided the whole Kingdom into Four Parts, and also *fecit cum Principibus & omni Populo, Ipse & illi cum Ipso percusserunt*: Where you see the *Populus* or Commons is put distinct by this Author from the Great Lords or Noblemen, here called *Principes*; and this Council is called by Abbot *Bromton* in his History *Parliamentum apud Oxoniam*: And also in his Charter to the Abbey of *Briadricesworth* (since called *St. Edmundsbury*) which is still to be seen in the Office of the King's Remembrancer of the *Exchequer*, it is thus recited, *Ego Cnut, Rex totius Albionis Insulæ, & aliarum Nationum plurimarum, in Cathedra Regali promotus, cum Consilio, & Decreto Archiepiscoporum, Episcoporum, Abbatum, Comitum aliorumque omnium Fidelium eligi Sanciend.*: Whence it plainly appears, that under the Word *Fideles*, was then comprehended other Persons of an Inferior Rank, or Order, to the *Comites*, or Earls, there mentioned; and these could mean no other, than the Representatives of the Commons, whom I have proved to have been present in these Councils.

Al. I cannot believe you have yet proved it; for though I have hitherto omitted to give you my Thoughts of this Word *Fidelium*, yet I must now tell you once for all, that by this Word is not here meant, or any where else in our *Saxon* Laws, to be understood the ordinary or common Sort of People, or any that represented them, but only *Tenants in Capite*, or in *Military Service*, which were then called the King's *Thanes*, and were afterward the same with the *Barones Minores*, mentioned in King *John's* Charter. But I shall plainly prove, when I come to it, that the Word *Fideles*, after the Conquest, signified only the King's *Tenants in Capite*, and were the same with the *Milites*, whom we find to be Witnesses after the Dukes, or Earls, to this Charter of King *Cnut*. And though I confess this Word *Fideles*, doth in a common, or larger Acceptation, signify all such Subjects as owe Fealty and Allegiance to the King; yet in a Strict and Legal Signification (as it is here to be taken) it signifies only the Barons, or *Tenants in Capite*, as Dr. B. hath very well shewed us in his Glossary. And therefore Sir *Henry Spelman* himself distinguishes between these and all other Subjects, in these Words, *Interdum Specialiter dicuntur iidem, qui Vassalli, qui Feudo accepto in Patrum Fide, & clientela sunt, Vicissimque Suam ei certi obsequii nomine fidem astrinxerunt*. But indeed it is impossible to understand it in your Sense; for then all that swore Fealty to the King (and so were called *Fideles*) should have had a Place in Parliament, and all the Men in *England* above Fourteen Years of Age, must have been there in Person; which would have been a pretty large Assembly, and such a Multitude as no one Place could have contained them.

Gloss. Tit. Fideles.

P. 136.

E. If what Dr. B. in his Preface to his *Norman History*, page 157. as also in his Answer to Mr. P. page 20. be true, that *Feudal Tenures* owe their Original to *William the Conqueror*, though in other Places he is of another Mind; then certainly this Word *Fideles*, must have been used in a larger Sense, in the Times before the Conquest, and must have extended to all those who were bound to take the Oaths of Fealty and Allegiance, in the *Folk-mote*, or *County Court*; as they

they did long after the Conquest, and ought to do so still, if required; and therefore this Word *Fideles* could be then no more limited to Tenants in Capite in that Time, than it is now; who, though I grant they could not all be present in the Great Council in Person, yet they might be there by their Delegates (as well as they are now) and who might also consist of far greater Numbers than they now do; since we find in the Council of Winchester, (but now mentioned) that after the Dukes, Earls, and Great Men of the Kingdom, there is also added, *aliorumque fidelium infinita multitudo*; which great Multitude sure must have signified somewhat more than your Chief Thanes, or Tenants in Capite alone; or else the Words *Comites*, and *Proceres*, might very well have comprehended all the Degrees of Laymen: And therefore I desire you to shew me by some better Authorities than you yet have done, that before the Conquest, the Word *Fideles* must needs signify Tenants in Capite, and no other; but that it did not signify only so after that Time, I shall join Issue with you by and by.

I shall now proceed to my next Authority, which is from Ailred, Abbot of *Rievallis*, who lived not long after the Conquest, who in his Life of Edward the Confessor, relating the manner of that King's Election in his Mother's Womb, tells us, *Hæc Ethelred his Father called a Great Council about appointing a Successor*, that hereupon says thus, *Fit Magnus coram Rege Episcoporum Procerumque Convectus, Magnus Plebis Vulgique Consensus*; where you see apparently, that this Abbot made a Distinction between the Assembly of the Bishops and Great Lords, and that of the Plebs, *Vulgus*, or Common People.

M. Pray give me leave to interrupt you a little before you proceed to any fresh Authorities. I grant it is true, that the Abbot in the Place you mention, tells such an idle Tale, that this Edward was chosen King whilst in his Mother's Womb, and so his Father made the Nobility swear Fealty to him before he was Born. He is the only Author of this Legend that I know of; and sure your self must own that it is a little too gross to be believ'd; and therefore I wonder that you should urge that to me for a sufficient Authority, for the People or Commons having any Place in the Great Council in those Times.

F. Pray, Sir, observe to what Purpose I make Use of this Authority; it is not to make good the Election of Edward the Confessor in his Mother's Womb, but only to prove who were then supposed (when this Abbot writ) to make up the constituent Parts of the *Wittena-Gemot*, or Parliament, in the Saxon Times, which was then believed by all Men, to consist of the Clergy, Higher Nobility, and Commons, unless you can suppose that the Abbot should mention the Commons by Prophecy. And granting that it was only according to the Custom of his own Time (which the Author of the Preface to the *Decem Scriptores*, makes to be about the middle of King Henry II's Reign) it will sufficiently prove the Antiquity of the Commons in Parliament, to be near a Hundred Years older than the earliest Time you assign for it, (*viz.*) the 49th of Henry III.

But I shall now conclude with the Conclusion to King Edward the Confessor's Third Charter to the Abbey of Westminster, in a great Council held in the last Year of his Reign, as you will find it thus recited in Sir H. Spelman's Councils, in these Words; *Hanc igitur Chartam mee donationis & Libertatis, in die dedicationis prædictæ Eccle. recitari jussi coram Episcopis, Abbatibus, Comitibus, & omnibus Optimatibus Angliæ, omnique Populo audiente, & vidente*; where by the *Optimates Angliæ*, I think can be understood no other than the Thanes, or Frecholders of all Sorts, as well the Kings as others; as also the Deputies of great Cities and Boroughs, the Words being *Optimates Angliæ (non Regis)*; and though it is not likely that the *Populus*, who are here mention'd to be present, should be the Mob, or Common People, only admitted to stare and hearken at such a great Assembly; yet since the Words are in respect of them only, *audiente, & vidente*, I shall not insist upon the Word *Populus* here, as a Part of this Common Council of the Kingdom.

But yet that the Word *Populus* does oftentimes refer to the Representatives of the Commons, I shall conclude from the Answer of King Harold, the last Saxon King, to the Message of William Duke of Normandy, demanding the Kingdom of England; and that Harold, according to his Promise, should marry his Daughter: The Words are remarkable, and therefore pray read them out of Will. of Malmesbury, who lived near that Time, *Contra, Ille (scil. Heraldus) quæ dixi de Puellæ nuptus referens, de Regno (addebat) præsumtuosum fuisse quod absque*

Script. X.
Col. 372.

Vid. Spel.
Coun. Fol.
625.

Will. Malm. de
gestis Anglorum,
Lib. 2. Fol. 52.

Cap. 10.
Fol. 552.

absque generali Senatus, & Populi Convētiū & Edicto alienam illi hereditatem Juraverit. Now that by the Word *Senatus* is to be understood the higher Nobility, such as the Bishops, Abbots, Earls, &c. and that is meant by *Populus* the Representatives of the People, we have Mr. *Selden's* Authority on our Side, who in his *Dissertations on Fleta*, speaking of the great Question that arose in Parliament in King *Edward III.* Reign, concerning King *John's* Donation of his Kingdom to the Pope, gives their Conclusion to this Debate, in these Words, *Ordine universi tam generis Hieratici, quam Proceres, & Senatus, & Populus, solenni inita deliberatione in Comitiis, illi responderunt unanimes, irritam plane fuisse Johannis Donationem illam ut pote tam sine ordinum assensu, quam Juramento, in augurati adversum.* But of this great Authority I shall speak more hereafter, when I come to it in order of Time.

Since therefore it is apparent that the Commons had a Share in the Great Councils before the Conquest (as you call it) I desire that you would be pleased to shew me how they came to lose it after the coming in of the *Normans*, and to be so long without it, as until the 49th of *Henry III.* or 18th of *Edward I.* if your Authors are to be credited.

M. I must confess the Authorities you have brought out of the *Saxon* Councils, would seem to be of some Weight, were I not sensible, that the Monks, who were the only Records of these Councils, are very short and careless in giving a true Account of them; and if we go to the Councils themselves, we might be sufficiently convinced, that all those that are said to be present at them, could not have any Places or Votes in those Assemblies, as Members of them; for in some of them (as in this Example) we find the Queen to have been there, and to have given her Consent to the King's Charters; and yet I suppose you will not allow the Queen to have been there as an Estate by her self, much less to have been a Member of any of the Three Estates.

The like we may say for those Abbesses we find mentioned to have been present in divers of those Councils, and particularly in that of *Winchester*, you so much insist upon, wherein Tythes were granted; and these are said to have approved of the Royal Charter, as well as any of the rest; and sure you do not make Women to have had Voices in our great Councils in the *Saxon* Times. So that it appears plain enough to me, that Persons being mentioned as present in these Assemblies, or being Witnesses to Charters there granted, do not make them to have been constituent Members thereof. And therefore since the *Saxon* Times are so dark and obscure, and so little to be collected of Certainty from what we find in the old Monkish Histories, and those Fragments of Laws and Charters they have left us, many of which are also forged by the Monks; I think it is Time that we pass over this, to the next Period after the Conquest, wherein I doubt not but to shew you, that for above an Hundred Years after that Time, none but the *Bishops, Abbots, Earls, Barons*, or *Tenants in Capite*, were summoned by the *Great Council* or *Parliament* till the Time I have so often mentioned.

F. I see you do all you can to perplex very plain and evident Proofs; For as to the Queen's being often present at the great Councils, it is no more than what was usual in these elder Times; and that in *France* as well as here, as any Man that will but peruse the Charters of some of the Kings of *France*, of the Second Race, as they are in *Father Mabillon de Rediplomatica*, may easily satisfy themselves; and as for the Abbesses, whom we find sometimes mentioned to have been there before the Conquest, they might also according to the Custom of those Times have appeared in Person in the great Councils, in the Right of their Monasteries, and of those great Possessions they held; or else they might have been often represented by their *Oecomi*, or Stewards, who transacted all Business for them; and your own Civil Law doth always suppose, that what any Persons perform by their Lawful Proxies, it is said to be done by themselves; and that the Abbesses and Prioresse, did together with the other Spiritual Tenants *in Capite*, join to grant Scutage upon the Knights Fees they held, after your Conquest, I shall shew you before we have finished this Discourse. But since I think I have sufficiently proved the Commons being in Possession of this Right by a long Prescription, I shall now leave it to you to prove, that they did not enjoy it after the Conquest, and that not until the Time you suppose.

M. Since

Pag. 156.
Pag. 158.
Pag. 106.

M. Since you are pleased to impose this Task upon me, I shall willingly submit to it; and therefore before I proceed farther, pray let us see how far we are agreed. In the first Place I think you will grant, that till about the latter End of *Edward Ist's* Reign, there is no express Mention made in our Records, or Historians, of any Representatives for the *Commons*, either by *Knights of Shires*, *Citizens* or *Burgesses* of Towns; much less the Word *Commons*, mentioned by them in the Sense it is now taken: For if we peruse *Ingulph*, or *Eadmerus*, or any other Ancient Historian of *William the Conqueror*, or his Son's Time, when they have Occasion to speak of the Great Councils of that Age, we can find none mentioned (besides the Bishops) except the *Principes*, *Proceres*, *Primates*, or *Optimates Regni*; or else in the following Age, these *Optimates*, or *Magnates*, (by *Matt. Paris*, and *Matt. of Westminster*,) are often comprehended under the more particular Titles of *Comites & Barones*, or else by the more general ones of *Nobilitas*, *Universitas*, *Communitas*, or *Baronagium Regni*; that is, the whole University, Community, or Body of the Kingdom, represented in Parliament by the *Bishops*, *Abbots*, *Earls*, and *Barons* thereof. As for most of these Words, I have given you my Sense of them already, in the Times before the Conquest; and though I grant there may be other Persons sometimes mentioned after the *Barons*, as *Milites*, *Liberi Homines*, or *Tenentes*, yet I think Dr. B. very plainly proves, by those Authorities he produces in his Answer to Mr. P. as also in his Glossary at the End of it, that by all the Words before-mentioned, which are used in our Ancient Historians, can only be understood either the Greater Barons, or else the Less, who were *Tenants in Capite*, and were a Part of the *Baronage* or *Nobility* of those Times, and whose Votes did then conclude all their Subfeudatories, or *Mesne Tenants*, who held of them; and these together with the *Bishops* and *Abbots*, &c. did represent all Degrees of Men in the Kingdom, and being often comprehended under the General Titles of *Clerus* and *Populus*, or else *Plebs*, or *Vulgus*; or else under these Titles, as yet more generally expressed by *Regnum*, and *Sacerdotium*, i. e. the *Clergy* and *Lay* of the Kingdom; the Words *Populus*, and *Plebs*, or *Vulgus*, signifying no more in those Days, in our Historians, (when they treat of Parliamentary Affairs) than the *Lay-Earls* and *Barons*, with the other Less *Tenants in Capite*: So that the *Vulgar*, or *Common People*, neither by themselves, nor their Representatives had, then any Place in our Great Councils: And therefore I think I may boldly affirm with Dr. B., First, That the Commons represented by *Knights*, *Citizens*, and *Burgesses* in Parliament, were not introduced, nor were one of the Three Estates in Parliament, before the 49th of King *Henry the Third*.

Vid. B. G.
under these
Titles.

B. A. P.
Introduced.

Secondly, That before that Time the Body of the Commons of *England*, or *Free-men* (as now understood, or as we now frequently call them) collectively taken, had not any Share or Votes in making of Laws for the Government of the Kingdom, nor had any Communication in Affairs of State, unless as they were represented by the *Tenants in Capite*. And these Two Propositions I think I shall be able to prove by undeniable Evidence, drawn from our Ancient Historians, the Laws and Charters of our Kings, as also from those Parliament Rolls, Records, and Acts of Parliament, we have yet left us.

F. I confess you have made a very bold Challenge, and if you can make it out, I grant you will carry the Day, and I shall then willingly submit to your Opinion. But since I find the greatest Part of our Arguments do consist in the equivocal Use of those Words, by which I confess the Commons in Parliament are generally expressed in our Ancient Historians; I shall in the first Place shew you, (to avoid all unnecessary Dispute about Words) that by every one of these Expressions you have mentioned, the Commons might very well be comprehended, as well after the Conquest, as before. And therefore to take the Words in the same Order as you have recited them, I shall begin with the Word *Principes*, which I have already proved signified before the Conquest no more than Chief, or Principal Men; and that it means no more after the Conquest, I shall shew you by several Authorities. And though I grant that Word is most commonly used by *Eadmerus*, yet could it not be meant in the Sense it is now understood, there being then never a Prince, nor so much as a Duke in *England*. But what was understood by this Expression in after-times, we must appeal to Historians. *Mat. of Westminster*, in his *Flores Histor. Anno Dom. 1280*. (being the 7th Year of *Edward the First*, which was but Fifteen Years

Fol. 409.

after the 49th Henry III.) thus reckons up the Constituent Parts of that Parliament, *Rex, Pontifices, & Principes Anglicani convenerunt in unum*, &c. Yet in *Ret. Claus.* 7. Edward I. it is called a Parliament; and at which the Statute of *Mertmain* was Enacted. And that the Commons were there as well as they are now, I shall prove when I come to those Times.

in Bib. Cot-
ton.

But as for the Words *Proceres* and *Populus*, used as distinct from them, if you please to consult the Ancient Manuscript Chronicle of *Walter of Coventry*, 9^o Henry III. Anno Dom. 1225, you'll find this Passage; *Purificatione Beatæ Mariæ convocantur apud London, Proceres Angliæ, ibique tractatu habito diffusiore cum Clero, & Populo ibidem convocato Rex concessit Libertates tam Ecclesiæ quam Regni, quam Forestæ sicut Cartæ suæ inde concessæ & singulis Comitatus liberatæ plenius testantur ibidemque concessa Domino Regi a Comitibus, & Baronibus, & Clero & Populo ibidem presentibus, Quinta decima omnium mobilium de Communi assensu, præterquam de Ecclesiis.*

Ms. 223.

But *Mat. Paris*, in his History of this Transaction under this Year, relates it thus: *Rex Hen. ad natale tenuit Curiam suam apud Westm. Presentibus clero & populo, cum magnatibus Regionis solemnitate igitur ut decebat completa, Hubertus de Burgo ex parte ejusdem Regis proposuit coram Archiepiscopis, Episcopis, Comitibus, Baronibus, & aliis universis, &c.* But to give you now the rest in *English*: The King here demanded the Fifteenth Part of all their moveable Goods; upon which the Parties above-mentioned, with one Accord answered, That they would willingly yield to the King's Desire, if he would confirm the great Charters. To which the King having assented, and sealed them; they granted the said Supply. From which we may observe, that as all the inferior Clergy were comprehended under the Word *Clerus*; so must, by a like Parity of Reason, the Commons be under *Populus*, or else it would have been an idle Tautology when it is put, as it is here, distinct from *Magnates*.

Now supposing there be no other Persons expressly mentioned by these Two Historians to have been at this Parliament of the Laity, but the Earls and Barons, and Laity, comprehended by them under the general Names of *Proceres, Populus & Magnates*; yet do but read the Conclusion to the great Charter of the 9th of Henry III. and you will find, that besides the Archbishops, Bishops, Earls and Barons, there were also present, the *Knights, Freeholders*, and all others of the Kingdom, by their lawful Representatives, as I shall shew you more at large, when I come to make Use of this Charter, as an Argument to prove the Commons to have appeared in Parliament before the 49th of Henry III. So likewise the Statute of *Fines* made 27. Edward I. was ordained *de Communi Concilio Regni*, and yet no Mention made either of the Assent of the Lords or Commons; and yet this Statute was made but Nine Years after the 18th of that King. Since which Time the *Doctor* himself acknowledges the Commons to have been always represented in Parliament, as they are at this Day; and yet *Mat. Westminster*, speaking of this Parliament, mentions its Orders only in general Words, thus, *Dominica secunda Quadragesimæ citatis Magnatibus Regni apud Westmonasterium*; and yet it is certain all the Estates of the Kingdom were there: So that it is not safe to conclude from the general and equivocal Expressions, either of Ancient Statutes, or Historians, That the Commons were not in Parliament, because not particularly mentioned.

I could give you more Instances of the like Kind, but I will not tire you. But shall now proceed to shew, that notwithstanding the Use you make of the Testimony of *Mat. Paris*, as to the Sense of the Word *Magnates*; yet, that all those Historians that writ immediately before, or after him, and continued his History, do frequently make Use of the Word *Magnates & Primates*, to signify the Commons, as well as the Lords assembled in Parliament. And for the Proof of this, I shall give the Testimonies of Two approved Authors. The First is *Thomas Walsingham*, in his History of England; who in Anno Dom. 1313, 6. Edward II. hath these Words, *Recedens: (Rex) de Berewici partibus pervenit Eboracum, ubi magnum cum Clero tenuit Concilium, & Regni Magnatibus Universis.*

So likewise *Mat. of Westminster*, in his *Flores Histor.* in the 24th of Edward I. Anno Dom. 1296, relates a Parliament held at St. Edmondsbury, at which appeared *Primates, ac Magnates sui Regni, &c. a quibus novum Tallagium postulavit, &c.* I could give you more of the same Kind out of this Author, but I fear, lest I should tire you; and therefore I shall conclude with the Testimony

of Hen. de Knighton, in his History, *De Eventibus Angliæ*, where, in 9. Henry III. he thus speaks concerning this King's granting the Great Charters, *Post hæc Rex Henricus concessit Magnatibus terræ duas chartas, unam de Foresta, & aliam de libertatibus, ob quam causam Communes Regni concesserunt quintam decimam partem Mobilium, & immobilium.* From all which you may observe, That in the Time when this Author wrote, it was generally believed, that this Term *Magnates*, comprehended all the Estates of the Kingdom; and likewise supposed the Commons (whom he here calls *Communes*,) to have had a principal Share, not only in the paying, but granting this great Tax. And for the farther Proof of this, pray see what *W. Malmesbury* says in his History, when reciting the Speech of the Bishop of Winchester, then the Pope's Legate, speaking of the Londoners, hath this remarkable Passage, *Londinenses, qui præcipui habebantur in Angliæ sicut Proceres*; so that if the Chief Citizens of that Famous City, were reckoned *sicut Proceres*, sure those they chose to represent them in Parliament, might much better deserve that Title. And thus likewise *Walsingham* in his History, in the 17th of Edward II. tells us, that he summoned to a Parliament at London, *Regni Proceres, & Prelatos ad Tractandum de variis Regni negotiis*; but in the close Roll of this very Year, it appears by the *Expensis Militum*, that the Commons were there as well as the Lords. So that you see they were all then often comprehended by our Historians under the general Term of *Proceres Regni*.

Rot. Claus. 17.
E. II. m. 24.
dorfo.

I come in the next Place to the Words *Nobiles & Nobilitas*. *Walsingham*, 5. Edward II. gives us this Account; *Post Natale Dominicum convenit universa multitudo Regni Nobilium ad Parliamentum Londoniis*. Now what is here meant by this *Multitudo Nobilium*, may be proved by the Parliamentary Writs of this Year, as appears by the close Roll, wherein there are Writs of Summons for the Commons, directed to the Sheriffs.

Mr. Pryn's 2d
Part of the R.
of Par.

And that the House of Commons were often stiled *Noble* in latter Times, appears by a Speech Recorded in the Rolls of Parliament, 7th of Richard II. to be spoken by Sir Mich. de la Pool, then Lord Chancellor, to the Lords and Commons, which begins thus, *T dist vous (i. e. I say to you) Messieurs Prelats, & Seigneurs Temporels, & vous mes Compaignons les Chivalers, & autres de la Noble Commune de Angleterre.*

Rot. Parl. 7.
Rich. II. Parl.
1. n. 1.

And to prove that this Word was then used in this Sense amongst Civilians, from whom we derive most of our Titles of Dignities, you may see in the large Work of *Barthol. Cassaneus*, called *Catalogus Gloriæ Mundi*, written on this Subject; where, in his Eighth Part, *Confid.* 18, he hath this amongst other Comments on the Word *Nobilitas*; *Nobilitas etiam causatur ex loco, quoniam civis ex urbe splendida oriundus, Nobilis est*; for which he there gives many Authorities. And this Title he looks upon as due also to Country Gentlemen, living upon the Husbandry of their own Estates, or Annual Rents.

And that by the Word *Magnates*, are often understood the Knights of Shires, commonly called in old French, *Grantz des Countees*; I can give you sufficient Authorities: Now this Word *Magnates* is always rendred in our old French, by *Grantz*: For the Proof of this, I desire you in the first Place to take Notice, that *Rot. Claus.* 3 E. 2. in 16 dorfo, you will find this Title, *Inhibitio ne qui Magnates, viz. Comes, Baro, Miles, seu aliqua alia notabilis Persona transeat ad Partes transmarinas*. Where you see the Word *Magnates* is applied to Knights as well as Earls and Barons. And amongst the Common Writs of *Michaelmas* Term, Anno 34 Edw. I. in the keeping of the Remembrancer of the Treasury of the Exchequer, the *Knights of Shires*, and *Barons of the Cinque-Ports* are called *Magnates*. So also in the Statute, 25 E. 3. *de servicantibus*, it is there enacted, *per Assent de les ditz Prelatz, Countes, Barons, & autres Grandes de la dite Communalte, illonques Assemblez*. Also in the Statute-Book printed in French, in the Statute of the Staple, 27 E. 3. the Knights of the Shires, are expressly called, *Grantz des Countees*. And lastly, as for the Word *Optimates*, which is derived from the superlative *Optimus*, it signifies no more than the best Sort of Men in any Commonwealth or City. And in this Sense, *William of Malmesbury*, in his History, speaking of the Rich Citizens of London, hath this remarkable Passage, *Londinenses qui pro magnitudine Civitatis optimatis sunt*. And that not only Knights, but also such Citizens as were remarkable and eminent for their Estates or Offices in Cities,

P. R. C. p.
94, 95.

Pas. 189.

*Tract. de Anti-
quas. Legibus,*
p. 64.

had the Appellation of *Magnates*, appears from an ancient Manuscript Book, kept in the *Archives* of the City of *London*; where in *Anno Dom.* 1229. being the 12th of *Hen.* 3. an Act of Common Council was made, *per omnes Aldermannes, & Magnates Civitatis, per assensum unversorum civium, quod nullo tempore permetterent aliquem vicecomitem admitti in vicecomitem per duos annos continuos, sicut prius extiterant.* So likewise in the same Book, *Anno Dom.* 1244. 29 *H.* 3. mention is there made of a Dissention that then arose about the Choice of a Sheriff; and the Book says, that *quidam de vulgo elegerunt, Nichol. Bat. per assensum Majoris, & Magnates elegerunt Adam de Bently.* I could give you more of a like Nature; but I will not tire you; but no doubt the eminent Citizens of *York* and other Cities, were called *Magnates* in those Times.

From all which we may safely conclude, that not only Knights of Shires were called *Magnates*, but also the Representatives for the Cities were often stiled *Proceres, Magnates, and Nobiles*, in our ancient Rolls, and Acts of Parliament, and other publick Writings. I beg your Pardon for being thus long; but I could not make an End sooner, and prove the true Sense of these Words in question, from ancient Historians, Acts of Parliaments, and Records; by which I hope you will be satisfied how unsafe it is to depend upon the general and various Expressions of our *English* Historians (especially, as understood by those of your Opinion); since if we should depend upon them alone, the Commons would not oftentimes be found to have been present in Parliament, even when the Records themselves expressly prove they were there.

M. I must confess you have made me think more on this Subject, than perhaps otherwise I should have done; yet I must observe, that most of the Quotations you have made use of, concerning the meaning of the Words *Proceres, Magnates, and Nobiles, &c.* are from Authors who writ after the Time that I own the Commons, as now represented, to have been constantly summoned to Parliament; so that they might very well, through Haste or Inadvertency, confound them with the Earls and Lords, and so stile them by the same Titles. For I will prove to you, before the Conclusion of this Discourse, by undeniable Records, that by the Words *Magnates* and *Proceres*, must be understood the Bishops, Earls, and Barons, as distinguished from the Commons. And I think I can sufficiently prove from *Mat. Paris*, and the ancient Laws of our first *Norman* Kings, as also from the *Magna Charta* of King *John*, that by the Words *Barones* are meant the *Tenants in Capite*, who are there only mentioned to have constantly appeared in Parliament, till the 18th *E.* 1.; the greater and less *Barons*, or *Tenants in Capite*, together with those of *higher Degree*, (*viz.* the Earls, Bishops, and Abbots,) being the only Persons who represented the whole Body of the Nation, in our great Councils, or Parliaments. And I take this to be so evident and clear, that I cannot quit this Opinion, without you can shew me better Reasons to the contrary, than hitherto you have done.

F. I see nothing will satisfy those who have once received a Prejudice; or otherwise I think it may be proved sufficiently, from that Clause in *Magna Charta* I have mentioned, that other Persons were there before the 49th of *Henry III.* besides your great *Barons*, and *Tenants in Capite*. And as for the use of those Words you mention, in our Historians after the Reign of *Hen. III.* nothing can be a plainer Proof for me: For if they did comprehend the Commons under those general Words or Phrases we have been now disputing about, I desire to know why they might not have been likewise comprehended under the same Terms, by *Mat. Paris*, and those other Historians who writ their Histories from the *Norman Conquest* to the End of the Reign of *Henry the Third*; and why they might not have then confounded the *Commons* with the Lords, as well as they did afterwards. But since I see you insist so much upon your *Barons*, and *Tenants in Capite*, whom you will have alone to constitute the *Baronagium*, or the *Communitas*, or *Universitas Baronagii Angliæ*, pray give me leave to ask you a plain Question, Were your lesser *Tenants in Capite*, (or *Barones minores*) Lords or Peers of Parliament, or were they Commoners only?

M. To give you *Mr. Selden's* Opinion, in his Titles of Honour, *cap.* 5. He supposes, that from the Time of the Conquest to about the middle of King *John*, every Tenant by reason of his Tenure or Lands he held *in capite*, was indifferently an Honorary or Parliamentary Baron; but that about the

End of King *John's* Time, some only that were most eminent of those Tenants, (sometimes stiled *Barones Majores Regni*) were summoned by several Writs directed to them as Lords or Peers of Parliament; and that the rest, being the lesser or lower *Tenants in Capite*, (sometimes stiled *Barones minores*,) were for some Time before this summoned by general Writs, directed to the Sheriffs or Bayliffs, as appears by King *John's Magna Charta*. Yet whether these Men were ever really Peers or not, I have Reason to doubt; since I do not find but it was they alone who for some Years after the Conquest, served upon Juries in County Courts, and dispatched all the Publick Business of the County; which was then (as at this Day) a Drudgery beneath the Peers to perform; and therefore I shall not insist upon it. But thus much I think is certain, That they were a sort of Persons much above any other Laymen of the Kingdom; since they held their Estates immediately from the King, and were so considerable, as that by the Constitutions of *Clarendon*, they were not to be Excommunicated without the King's Leave; and so were then in some sort of the same Order, *ratione Tenuræ*, with the Great Barons or Peers, being commonly stiled *Barones*, and made up but one Estate or Order of Laymen in Parliament. And from thence I suppose proceeds that common Error of Sir *Ed. Coke*, that the Lords and Commons did Anciently sit together, and made but one House. Now if you have any Thing to object against this Notion; pray let me hear it.

B. A. P.
p. 18.

F. I think you and I are come pretty near an Issue in this Question; for you confess that these lesser *Tenants in Capite*, and whom you comprise under the Word *Barones*, were not truly and properly *Barons*; and so far you are in the Right; but yet you will have them to be somewhat more than meer Commoners; as if there had been some Degree or Order of Men in *England* in those Times, who were neither Lords nor Commons, but an Amphibious Race between both. But to prove that they were indeed no more than Commoners, and not Lords nor Peers at all, nor equal with them, we need go no farther than their way of Tryal in Cases of Treason or Felony, which was by meer Commoners, who were not *Tenants in Capite*, as well as those that were; so that a Person who was no *Tenant in Capite*, might serve upon a Jury of Life and Death, with those that were so; and as the Doctor, in his Answer to Mr. P. has asserted, that they only served *in the Countrey upon all Juries*; and that before the Time of King *John*. So after all this Noise of none but Lords and Barons appearing for the whole Commons of *England*, we find by your own showing, that Three Parts in Four of the Laymembers of that Council, were as meer Commoners as our Knights of Shires, and Barons of the Five Ports at this Day; nor can I see any Reason why the other *mejné*, or inferior Military *Tenants*, might not be as well comprehended under the Word *Barones*, as the former, who were meer Commoners likewise; if we consider that it was neither Nobility, nor Birth, nor the King's Writs of Summons, but only the meer Tenure of their Lands that gave them a particular Right to a Place in that Assembly in those Ages. So that the Question then amounts to no more than this, Whether the Commons of *England* were then represented by *Tenants in Capite*, or by Knights of Shires, and others, as they are now. But since you will have none but *Tenants in Capite* to have had Places therein; pray tell me whether you allow that Privilege to all who held *in Capite*, or not?

M. Yes, I allow it to all who held *in Capite* by Knights Service, and who also enjoyed a whole Knights Fee; or so much as was sufficient to render them able to sustain the Dignity of that Place; not but that the King had also a Prerogative of summoning or omitting whom of them he pleased, to his Great Council or Parliament; till the Less *Tenants in Capite* thinking it a Wrong to them, it was provided by King *John's* Charter, that all of them should be summoned by one General Writ of Summons, directed to the Sheriff. But I exclude from this Council, all Tenants by *Petit Serjeanty*; who tho' 'tis true, they held of the King *in Capite*, yet was it not by Knights Service. So likewise I exclude all Cities and Towns, though the Citizens or Burgesses of divers of them held their Lands and Tenements by that Tenure: Since being neither Noble by Blood, nor having Estates sufficient to maintain the Port of a Gentleman, or Knight, they had no Right to appear there in Person among the other Tenants, who were Owners of one or more Knights Fees. Yet do I not affirm, that the Commons were not after some Sort represented in Parliament by their Superior Lords, since the Bishops, Abbots, and other Barons, did then make Lords, and give Taxes, not only

B. A. P.
117. *Ordin.*
for

for themselves, but their Feudatory Tenants also, though of never so great Estates; and *Tenure in Capite* was then looked upon as the only true Freehold of the Kingdom, and the Tenants by it as the only true Freeholders.

F. I shall shew you by and by the Falsity of this Notion; but in the mean Time pray tell me when a Great Council or Parliament was called, who represented those Persons, who you say did not appear there; and made General Laws, and granted General Taxes for themselves, and the whole Kingdom, when there was Occasion? For I see you shut out the greater part even of these your own Freeholders from this Assembly.

M. As for the Tenants in *Petit Serjeanty*, I at present conceive (though I am not sure of it) that many of them might hold Lands, and perhaps divers Knights Fees, by Grand Serjeanty, or Knights Service also; since those Estates which were given by the Conqueror to his Servants, to be held of him by such and such *Petit Services*, might in Process of Time fall by Purchase, or Descent, into the Hands of such Great *Tenants in Capite*, as had sufficient Estates to maintain that Dignity; and as for the rest, they might, for ought as I know, before the Statute *de Tallagio non concedendo*, have been taxed by the King's Writs, according to the Proportion of the Knights Fees, or Parts of Knights Fees, which they then held; and according to the Rate of the Sums imposed in Parliament; either by way of Aids, upon every Knight's Fee; or else by way of Subsidy, by so much a Yard, or Plow-Land throughout all *England*; which has been the only way of Taxing, ever since that of Knights Fees hath been disused.

F. Then I find after all you have said, that scarce half your *Tenants in Capite* had any Votes in Parliament, either by themselves, or their Representatives; and so having Laws made for them, and being taxed at the King's Will, were as errant Slaves and Vassals, notwithstanding their *Tenure in Capite*, as the meanest Person of the Kingdom, who was Taxed (as you would have it) at the Will of his Superior Lord; which whether so great and powerful a Body of Men would ever have suffered, I leave to any indifferent Person to judge.

M. I grant this may now appear somewhat hard; yet since it was the receiv'd Law and Custom of the Kingdom, it was not then look'd upon as a Grievance; and it was then no more unjust than it is now, that Persons under Forty Shillings a Year in Lands, though of never so good Estates in Money, or Stock; or that Tenants for Years, or for the Life of another, should at this Day have no Votes at the Election of Knights of Shires, and consequently be without any Representatives in Parliament of their own Choice, and yet be subject to all Laws and Taxes (though never so great) when made and imposed by the King in Parliament. And I am able to give you divers good Authorities to prove, that even *London* it self, and all other Cities and Towns which held of the King *in Capite*, and were called his Demesnes, were often taxed by the King and his Council out of Parliament, before the Statute *De Tallagio non concedendo*: And I think Dr. B. hath proved this beyond Exception, in his Animadversions upon Mr. A's *Jani Anglorum facies nova*; and he there gives us the Record it self of 39 Hen. III. now in the keeping of the King's Remembrancer of the *Exchequer*: That the King did that Year (as he had divers times before) *Talliate*, or Tax all his Demesne Lands in England, and then likewise demanded of the City of *London*, the Sum of Three Thousand Marks, in the Name of the Talliage or Tax so laid: And the Mayor and Citizens at last yielded to it, after a great Contest. It appearing upon Search of the Rolls in the *Exchequer*, that the Citizens of *London* had been several times before so Taxed, in the Reigns of King *John*, and the King himself; and so they paid at least the Sum which the King demanded. By which you see, that the greatest and richest Cities and Towns in *England* were Taxed at the King's Will: nay, I think I am able to prove (were it now necessary) that the whole Kingdom was often Taxed by the King and his Council only, before the granting of King *John's Magna Charta*; and the Statute *de Tallagio non concedendo*, above-mentioned.

But to return to the Matter from which you forced me to digress.

I think nothing is more plain, than that our Ancient Parliaments were only the King's Court Baron for the Dispatch of the Publick Affairs of the Kingdom; and in which, as in the Lesser Courts Baron, or Courts of Manor, the Suitors or Tenants were, together with the Lord, or his Stewards, the sole Judges. So that at first, after the Conquest, it belong'd to the King alone, as the Supreme Lord

of the Kingdom, to appoint or call which or what Sort of those Tenants he pleased, to attend him with their Aid and Advice, at his Common Councils, or Parliaments. And I think nothing is more evident, (as I shall prove more at large from our Ancient Histories, Records and Statutes) than, that before the 49th of Henry III. and some Years also after that Time, none but the Bishops, Abbots, Earls, and Greater Barons, and some of the Lesser *Tenants in Capite*, called in King John's Charter, *Barones Minores*, then constituted the whole Body of the Parliament, under the Titles of *Baronagium Angliæ*, or *Communitas*, or *Universitas Baronagii Angliæ*. And for this I can give you so good Authorities, that nothing but more cogent and evident Proofs can bring me from this Opinion. And therefore I must tell you, I do not value those loose and inconsiderate Expressions of Historians, either before or after that Time.

F. I see the Testimonies of Historians are of no Credit, if they make against your Hypothesis; but I shall show you your Mistakes about the King's Taxing anon; but the main Force of your Argument lies in the Signification of those Latin Words you have last mentioned; and which, I must needs tell you, I think you take in too strict a Sense. For First, as to the Word *Baro*, I grant it was not much in Use before William I. obtained the English Diadem. *Baro*, says Camden, *Britanni pro suo non agnoscunt, in Anglo-Saxonice legibus nusquam comparet, nec in Africi Glossario Saxonico inter dignitatum vocabula habetur.* For the English Saxons called those in their own Language, *Æaldermen*, which in Latin were named *Comites*, and by the Danes *Earls*; but it was of so extensive an Import in its Signification, that we read of *Aldermani Regis*, *Aldermani Comitatus*, &c. as I have already shewed you. So that according to the strict Sense of this Word, we had great Number of these *Aldermen*; whose Titles seldom, if at all, descended Hereditary, till the Confessor's Time: And after William I. the Saxon Words *Æaldermen*, and *Thegnes*, began to be changed; and in the room of *Aldermani & Thani*, we find *Comites & Barones*, as in all our Ancient Laws and Histories. Nor was the Word *Barones* only taken in those Days for Great Barons, and *Tenants in Capite*, but also for the Inferior Barons, or Free Tenants, which held great Estates of other *Mesne* Lords, as well as of the King, by certain Services, and to whom the Great Lords, or Earls (as Sir H. Spelman shews us in his Glossary, Title *Baro*) often directed their Charters, *Baronibus, & Fidelibus nostris tam Francis, quam Anglis*; and we there also read some Quotations from the old Book of Ramsey-Abby, wherein the Barons of the Church of Ramsey, as also the *Milites*, and *Liberi homines* thereof, are particularly mentioned under the Title of *Barons*; all which, (as this Learned Author tells us) *non de Magnatibus sunt intelligenda, sed de Vassallis feodalibus, note scil. melioris.*

P. R. C.
Page 133.

Page 121.

Spel. Gloss.
Tit. Alderman.

Page 70.

And the same Author says a little lower, that Barons are often taken *pro libere Tenentibus in genere, hoc est tam in Soccagio per servitium Militare.*

M. What then? Do you suppose that all the Freeholders in England, by whatever Tenure they held, were *Barons*, and appeared in Person in Parliament, before the Time Sir H. Spelman in his Glossary, and Dr. B. assign for the summoning of the Commons to Parliament? At this Rate every Yeoman, or Petty Freeholder, was a Baron: So that this Assembly might then consist of above Fifty or Sixty Thousand Persons. Since Spot in his Chronicle tells us, that William the Conqueror reserved to himself the Service of about Sixty Thousand Knights Fees, which by the Time, I suppose, might have been divided into many more lesser ones, by Co-heirship, or by Sale; and otherwise Parcelled out by the King's License into Half Knights Fees, Third Part of Fees, Fourth Part of Fees, Eight Parts, Sixteen, Twenty, Thirty and Forty Parts of Fees; and so have been increased into as many more. And these, besides the Tenants in Soccage, must needs have been so numerous, that what Room, nay, what Field or Place, was able to contain so great a Multitude? Or how could any Business have been transacted therein, without the greatest Confusion imaginable?

Vid. Gloss.
Tit.

B. A. P.
Page 19.

F. So then you your self must also grant, that when all your Greater and Less Barons, or *Tenants in Capite*, appeared in Person, Parliaments were much more numerous than they are now; since according to the Doctor's Catalogue, out of Doomsday-Book, (in his Appendix to his Introduction to the English History,) all the *Tenants in Capite*, or *Serjeanty*, that held the Lands in every County of King William, did (besides the Bishops, Abbots, Earls, and Barons) altogether amount but to about Seven Hundred; and these in the 49th of Henry III. by Forfeiture,

and new Conveyances from the Crown, or by those other ways you have now mentioned, might be multiplied into twice as many more; and those also of sufficient Estates to maintain the Port of a Member of Parliament, or Knight. Since Fifteen Pounds a Year was in the Reign of King *John*, and beginning of King *Henry III.* reckoned as a Knights Fee; and he that had it was liable to be Knighted. And if so, I pray, according to your own Hypothesis, how could so great an Assembly be managed, as of about Three Thousand, or Four Thousand Persons, without strange Confusion and Disorder? But upon our Principles there will follow no more Absurdities or Inconveniencies than in yours; for either these Barons of Counties, Burghs, and Inhabitants of Towns and Cities, were always represented by Knights and Citizens, as they are now; or else these Barons of Counties appearing for themselves, were Lords of Manors, or Freeholders of good Estates, who were not so numerous or inconsiderable as you imagine; the Freehold Lands in *England*, being in those Days but in a few Hands, in Comparison to what they are now. And for this Opinion I have Sir *H. Spelman* of my Side; who in the Place already quoted, under the Title of *Barones Comitatus*, expressly tells us, *Hoc nomine contineri videtur antiquis paginis, omnis Baronum Feodaliū species, in uno quovis Comitatu degentium: Proceres nempe, & Maneriarum Domini, nec non libere quique Tenentes, hoc est fundorum proprietarii, Anglicè Freeholders ut superius dictum est. Notandum autem est hoc liberè Tenentes, nec tam exiles olim fuisse, nè tam Vulgares ut hodiè deprehenduntur; nam villas, & Dominia, in minutas Hereditates non dum distrahebant Nobiles; sed (ut vidimus in Hibernia) penes se retinentes, agros, per precarios excolebant, & adscriptitios.*

Lamb. Arch.

So that you see Sir *H. Spelman* then believed, that the Manors, and Great Freeholds in *England*, were not then Parcell'd out into so many small Shares as you imagine. And that such Inferior Barons, whether they held in *Capite*, or not, were also called *Proceres*, see the Laws of *Henry I.* Chap. 25. The Title whereof is, *de Privilegiis Procerum Angliæ*. The Law runs thus, *Si exurgat placitum inter homines alicujus Baronum socnam habentium, tractetur placitum in Curia Domini sui.* Now that this *Socna* was no more than *Soc.* in old Saxon, see *Spel. Gloss. Tit. Sec. i. e. secta de hominibus in curia Domini secundum consuetudinem*; so likewise in *Titulo Socha, vel dicitur; Soc*; in Saxon *socn. i. e. libertas Franchesia*. From all which we may observe, that these Lords of Manors, (here called *Proceres & Barones*) had Court *Barons*, which took their Name from their Lords, though Feudatory Tenants or Vassals.

But granting that about the End of King *John*, or beginning of the Reign of *Henry III.* supposing that these Lords of Manors, and Great Freeholders, whether *Tenants in Capite*, or others, might amount in all to Five or Six Thousand Persons, I do not see why such an Assembly might not be as orderly, and as well managed, as one of Three Thousand, or Four Thousand, (supposing your Greater *Barons*, and Less *Tenants in Capite*, to have then made about that Number;) especially if we consider, that most Business, or Acts of any Consequence, (and for which Parliaments were called) might be prepared, and drawn up by the King and his Council before they met. So that take it which way you will, fewer Inconveniencies and Improbabilities attend my Hypothesis, than yours.

M. That the Earls and Greater Barons, both Spiritual and Temporal, together with the *Tenants in Capite*, (although never so numerous, as you are pleased to fancy) then made the Body of the Baronage of *England*, I have very good Authority on my Side; but that any Feudatory Barons, or Tenants of a Lesser Degree, ever had any Places or Votes in those Assemblies, I think you can give me no sufficient Authority for it.

Pag. 110.

'Tis true Mr. *P.* in his Treatise of the Rights of the Commons asserted, gives us Two modern Quotations; the one out of Mr. *Camden's Britannia*, the other out of Mr. *Selden*, to prove this Assertion. As for the former, it is in the Introduction to the *Britannia*, first published in Quarto; the Words are these, *verum Baro ex illis nominibus videatur, quæ tempus paulatim meliora, & molliora reddidit; nam longo post tempore non Milites, sed qui liberi erant Domini, & Thani Saxonibus dicebantur, Barones vocari caperunt, nec dum magni honoris erat, paulo autem postea* (meaning after the Normans Entrance) *eo honoris pervenit ut nomine Baronagii Angliæ omnes quodammodo Regni ordines continerentur.* But he doth not tell us that this learned Author, in his last Edition of this Work in Folio, being sensible of his Mistake, hath added the Words

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Superiores

Superiores before *Ordines*; whereby it is plain he now restrains it only to the *Earls* and *Barons*, as they are now understood.

Mr. P's other Quotation is out of Mr. Selden's Notes upon *Eadmerus*, where Fol. 162. Commenting on the Word *Barones*, he saith, *Vocabulum nempe alio notione usurpari quam vulgo, neque eos duntaxat ut hodie significare, quibus peculiaris ordinum Comitum locus est*; but then conceals this that follows, which makes directly against him; *Sed universos, qui Regiæ munificentia, ad formulam Juris nostri Clientelaris quod nullius Ville Regie glebam, sed ipsum tantum modo Regem spectat, Tenure en Chief (Phrasi forensi dicimus) sive Tenura in Capite lati fundia possidebant*; whereby you may see that he exprelly restrains this Word *Barones* to *Tenants in Capite* only; though your Author takes no Notice of it. Nor indeed in his Titles of Honour, doth Mr. Selden give us any other Description of a Baron, (I mean such who had a Vote in Parliament) but such in the Sense that is taken in Henry I. his Charter, as it is recited in *Matt. Paris, Siquis Baronum meorum, Comitum vel Aliorum qui de me tenent mortuus fuerit. i. e. One who was either one of the Earls, or Greater Barons; or otherwise held in Capite.* Chap. 5.

But Mr. P. is not at all to be blamed (as you make him) in these Two Quotations; in that out of *Camden*, you cannot deny, but he hath truly cited that Author, as it was in his First Edition; and if he afterwards altered it, it may very well be questioned, whether he did not add the Word *Superiores*, rather out of fear of displeasing the *English Nobility*, (whom that Quotation had before shock'd) than out of any Sense of his being in the wrong; as it appears by the Words immediately following, when he tells us out of a Nameless Manuscript Author, whose Name I wish he had told us; *That Henry III. out of so great a Multitude of Barons, which was seditious and turbulent, called the best and chiefest of them only by Writ to Parliament.* By which it plainly appears, that he supposed all those *Less Barons*, or *Tenants in Capite*, though no Lords, as now understood, who were thus excluded, to have been only Nominal, and not Real *Barons*; and if so, meer *Commoners*; or else he must extend the Peerage of *England* to at least Three or Four Thousand Persons; for so many *Tenants in Capite*, might very well be at that Time.

The same I may likewise say as to the Quotation out of Mr. Selden; for by the Words, *quibus peculiaris in ordinum Comitum locus est*; 'tis plain he supposed that all the rest of those *Tenants in Capite* were but *Commoners*; yet he no where affirms, that none but these appeared in Parliament for all the Commons of *England*; for he very well knew the Unreasonableness of that Supposition. Since besides these *Barons*, or *Tenants in Capite*, *Bracton*, in his First Book, tells us of Chap. 8. divers other Orders of Men, of Great Dignity and Power in this Kingdom, about the Time when you suppose this marvellous Alteration to have happened. His Words are these, *Et sub iis (viz. Regibus) sunt Duces, Comites, Barones, Magnates, sive Vavassores, & Milites, & etiam Liberi, & Villani, & diverse Potestates sub Rege constitutæ*; and a little farther, *sunt & alii Potentes sub Rege qui dicuntur Barones, hoc est Robur belli; sunt & alij qui dicuntur Vavassores viri magnæ Dignitatis.* From which Words I desire you to observe, that he here makes the *Magnates*, and the *Vavassores*, or Feudatory Tenants, to be all one, and also ranks them before the *Milites*. Now whether these *Vavassores* and *Milites*, who did not all hold of the King in *Capite*, were Men of so great Dignity and Power as these whom he here reckons immediately after the Earls and Great Barons, should have no Votes in Parliament, neither by themselves, nor their Representatives, is altogether improbable.

And agreeable to this of *Bracton*, *Du Fresne*, in his *Lexicon Tit. Vavassor*, tells Pag. 1262. us, that *Vavassorum duo erant ordines, sub majorum appellatione complectuntur, qui Barones appellantur, sub minorum vero, quos vulgò Vavassores dicunt; & lege Henrici I. Reg. Thaines minores, respectu Thainorum majorum qui Baronibus equiparantur.* But that these *Lesser Thanes* or *Vavassors*, were also stiled *Barones*, Sir H. Pag. 70 *Spelman* tells us expressly in his Glossary, *Tit. Baro; Etiam Barones Comitum, Procerumque, hoc est Barones subalterni, & Baronum Barones sæpiissime leguntur*; and of this he gives us many Examples; and particularly of the Chief Tenants of the Abbey of *Ramsay*, above-mentioned. So likewise the same Author, a Leaf or Two farther, speaking of the *Barones* of *London*, mentioned in the Charter of King Henry I. understands them, *pro civibus præstantioribus qui foenas suas, & consuetudines, i. e. Curias habuerunt, & Privilegia, eorum instar, qui in Comitatu, Barones*

Comitatus dicuntur, &c. Nor did this Title of *Barones* extend to London alone; but he also immediately tells us in the same Place, *Sic Barones de Eboraco, de Cestria, de Warwico, de Soe Feversham, & plurium Villarum Regiis Privilegiis insignium, cum in Anglia tum in Gallia, &c.* And that Barons of Counties were no more than Lords of Manors, I have just now proved; for *Socna* means no more than a Court Baron, or Court of a Manor. So that here arises a plain Distinction between the *Barones Regis*, the King's Great Barons, or Tenants *in Capite*; and these Lesser Barons, we now are here speaking of, called *Medmesse Thegnes*, and *Burgh Thegnes*, by the Saxons, till they fix on the Word *Parliamentum*, to signify the Common-Council of the Kingdom; who, though no Peers, yet were *Barones Regni*, Barons or Noblemen of the Kingdom, according to the general Acceptation of the Word *Nobiles*, in that Age; and as such made up the Body of the *Baronage*, called by *Matt. Paris*, and other Authors, *Baronagium*, or *Communitas Baronagii totius Angliæ*.

M. I see you do all you can from the equivocal Use of the Word *Barones*, to croud in new and unknown Men into the Great Council of the Kingdom, *viz.* your *Barons of Counties, Cities, and Towns*, whom (since you dare not affirm there were then any Knights of Shires) you suppose to have served instead of them; and these you would have to be, not *Barones Regis*, but *Regni*, or *Terræ*, forsooth, *i. e.* of the Land, or Kingdom; whereas we never had any true *Barons* that held by *Mesne* Tenures here in England. This if you deny, you must deny all History, and all our Ancient Laws, and Law-Books too; and if you grant it, you must confess, that every true *Baron* was a *Tenant in Capite*, and by your own Concession, he must then be the King's *Baron*, or *Baro Regis*. I grant indeed, there were Nominal or Titular *Barons* (such as you mention) many in those Times, such as were *Tenants* to Great Lords, *Bishops*, or *Abbots*, of whom we find frequent Mention in our Ancient Histories, Records, and Charters. But these are not the Men who had ever any Place in our Great Councils; and I desire you would prove to me, that ever they appeared there before the Times I assign; and I would also have you inform your self of the Gentlemen of whom you borrow this Notion, if they can prove that there were any such kind of *Tenure*, as *Tenura de Terra*, or *de Regno*? Or whether there was ever any Man that held an Estate *de Regno*? Whether Forfeitures or Escheats were to the Kingdom? And whether Fealty was sworn, or Homage done to the Kingdom? Or whether an Earl was invested or girt with the Sword of the County by the Kingdom? Or whether the Ancient Ceremonies used at the Creation of Earls and Barons, were done by the Kingdom? Thus all the Barons of England held of the King; and thus all these Things were performed and done to our Ancient Kings, and by them; which are most manifest Notes of the King's immediate Jurisdiction over the Barons; and that they were his *Tenants in Capite*, and by Consequence his Barons only, which you cannot deny; and of which *Tenants in Capite*, the Earls and Greater Barons, always Created by Investiture of Robes, or other Ceremonies, were summoned by particular Writs; and the other Less Barons, or *Tenants in Capite*, ever since the 17th of King *John*, were summoned by one Common Writ, directed to the Sheriff of the County; since which Time (if not some Time before) I grant these *Tenants in Capite* were not look'd upon as Barons or Peers of the Kingdom, properly so called. Yet did their Votes in Parliament still conclude, and charge their Tenants in the making and imposing of Taxes or Laws, which they alone, together with the Bishops and greater Barons, still performed, until the Times I assign.

F. I see you are in a Wood, and do not know well under what Class to rank your *Tenants in Capite*; for if they were at first all Lords or Peers, how could they serve upon Juries in Hundred or County Courts? If they were meer Commoners, then there were Commons in Parliament, before the 49th of *Henry III.* and why might not others as considerable Commoners, have Places in the Great Council as well as they, whether they were the King's Barons, or *Tenants in Capite*, or not? But in Answer to this, you tell me, that we never had any *Barons* held by mean Tenure, here in England; this is plainly equivocal; for if you mean it of *Barons in Capite*, it is true; if of other *Baronies*, it is false by your own Confession. And Sir *H. Spelman* tells us, in the Title last quoted, that the Baron of *Burford* pleaded to hold of the King *per Baroniam*, and yet he was never any Baron of the Kingdom. Now I desire you to shew me, if he, and such like Barons as himself, had no Place in Parliament, who it was represented them there. And therefore in Answer to your *Dilemma*, I grant that every

every Baron by Tenure, was a Tenant *in capite*; but every Tenant *in capite* was not a Baron; and this I think is so plain, that you your self cannot deny it.

But as to your next Question, I can answer it without asking the Gentleman, from whom you suppose I borrow the Notion, That there might be other Barons, or Lords of Mannors, who by reason of their Estates might have Places in Parliament (supposing Knights of Shires were not introduced till after King *John's* Time, when such Freeholders became too numerous all to appear in Person) and yet these might not be Barons by Tenure: And therefore all your Questions conclude nothing; for you suppose that which is still to be proved, that because all the Barons of *England*, properly so called, held of the King *in Capite*, and were consequently his Barons; that therefore none but Barons, and Tenants *in Capite*, had any Place in our great Councils, which is the Thing you suppose, and I as positively deny.

M. Well Sir, since you put it to that Issue, I hope I shall fully convince you, that none but the Persons I have mentioned were the constituent Members of the Common Council or Parliament, before 49th *Hen. III.* or 18th *Edw. I.* and who alone gave Assent to all Laws that were made, and all Taxes that were to be imposed on themselves, and their Under-Tenants, who were then concluded by the Acts of their superior Lords.

But not to wrangle with you any longer, about the Signification of the Word *Barones*, I grant there were Nominal or Titular Barons, very many, such as I have mentioned; nay, that there were several other great Subjects, who had Tenants that held 5, 6, 7, 8, or 10, nay more Knights Fees under them, and who had the Name and Title of Barons. But what is this to the Purpose? I desire you would prove to me, by any direct Proof, that these Sort of Men had any Voices, either by themselves, or their Representatives in our great Councils, till after the Time we allow them; and this (besides the Proofs I have already brought) I think is sufficient; since it is plain, that the *Barones Regni*, or *Terræ*, and the *Milites*, and *Homines sui*, are all one and the same Persons, that is, they were the King's great Barons, or Tenants *in Capite*, who alone constituted the Baronage, or University of the Baronage of *England*, or of the Kingdom, in our great Councils, or Parliaments. And for the farther Proof of this, I need go no farther than those very Arguments your own Author Mr. P. hath made use of, in his *Right of the Commons asserted*; wherein he would prove from certain Letters that were sent from the Baronage, or University of the Baronage of *England* to the Pope, against the Church of *Rome's* Exactions here in *England*. And therefore I shall not bring only Fragments, Phrases, or single Words out of the Records or Histories which seem to countenance my Opinion, contrary to the true Meaning of those Records, and the Sense of the Historians, as some of your Men do, but shall give you the Quotations out of those Authors, whole and entire; and shall make such reasonable Deductions from them, as I think you will have no reason to deny to be fairly raised from the Words themselves.

Thus also, as *Matt. Paris* relates, in the 29th *Hen. III.* the Earls, and Barons sent Letters to the Pope, then at the Council of *Lyons*, to complain of the Pope's Exactions; which Letters are said by this Author to be directed *a Magnatibus, & Universitate Regni Angliæ*. And it is also true, that in the same Year there were other Letters sent thither, from the same Parties, to the Cardinals there assembled, which are recited by the old Manuscript to have sent Messengers to the Cardinals; and the old Manuscript in the *Cottonian Library*, that they sent to the Cardinals assembled at the Council of *Lyons*, Letters *à Baronibus, Militibus, & universis Baronagij Regni Angliæ per procuratores suos Rogerum Bigod Comitem Norff. Willielmum de Cantelupo, Johannem filium Galfridus Radulphum filium Nicholas, Philippum Basset, Barones, Procuratores Baronagii Angliæ tunc temporis. Innocentio Papa Quarto celebrante Concilium ibi generale. Anno Gratie 1245.* And the Letters are thus directed; *Venerabilibus in Christo Fratribus universis, & singulis Dei Gratia Salutem. Barones, Milites, & Universitas Baronagii Regni Angliæ.* And *Matt. of Westminster* does likewise agree in this Relation, only styles the Persons last named, *Milites*, whom *Mar. Paris* called *Viri Nobiles, & discreti*: But this will make no Difference, as I shall shew you by and by; and to these *Matt. of Westminster* adds Mr. *William Powic* Clerk, who seems to have been their Secretary.

B. A. P.
Page 103, 104.

Tome I.
Fol. 706.
Et dein.

But notwithstanding, it will appear that all these Persons so sent, named *Barones & Milites, & Universitas Baronagij*, did not represent the Commons of England at all, but only the great Earls, Barons, and Tenants *in Capite*. For first it appears from Sir W. Dugdale's Baronage of England, that every one of the Persons here named, was either an Earl, Baron, or great Tenant *in Capite*, and not common Persons, as your Author would have them: And tho' it is true, the Cottonian Manuscript, and *Matt. of Westminster* call some of them *Milites*; yet this makes nothing against our Opinion; for as I proved before, the great *Milites* were often stiled Barons, and the Barons *Milites*.

Nor was this Earl, and the four Barons here mentioned, chosen or sent by the Baronage of the Kingdom assembled in Parliament, to represent them at the Council of Lyons, but were only pitched upon by a Body of Military Tenants, or Barons, at a Tournament intended to have been held at *Danstable*; which was forbidden by the King; and these took upon them to warn Mr. Martin, the Pope's Clerk, out of the Kingdom; as appears by the Account *Matt. Paris* gives us of this Business, in the Paragraph immediately following: So that the History of the thing makes it plain, who were the *Universitas Regni*; to wit, the Barons, or the *Universitas Armatorum*, who were met to hold the Tournament, and these the King there called his Barons.

Matt. Paris,
696.

B. A. P.
Pag. 106.

And after this, in the 30th of Hen. III. when the Pope did not give Satisfaction to their Grievances, the King called (as this Author tells us) *ad Parliamentum generalissimum, totius Regni Anglicam totalem Nobilitatem Londini* (viz.) *Prelatorum tam Abbatum, & Priorum, quam Episcoporum Comitum quoque & Baronum ut de Statu regni jam vacillantis efficaciter prout exegit urgens necessitas contrectarent*. In this very Parliament the King conferr'd with the Bishops by themselves, and the Earls and Barons by themselves, about this Business of the Pope's not keeping his Promise: And certainly if there had been then any Commons in this Parliament, he would also have conferred with them about the same Matter.

The Result of all these Conferences was, that yet for the Reverence due to the Apostolick See, they should again supplicate the Pope by Letters, to remove their intolerable Grievances, and insupportable Yoke. And this they do in separate Conferences. The Bishops write by themselves; the Abbots and Priors by themselves; and the Earls, Barons, &c. by themselves, to the Pope; and if there had been any Commons, as at this Day, they most certainly would likewise have wrote to the Pope, as well as the other constituent Parts of this Parliament did.

F. I hope I shall be able to answer what you have now said: In the first Place, tho' I should grant that these Commissioners sent by the Baronage of England, were all of them Barons, and no Commoners among them; doth it therefore follow that the Persons that sent them, must have been all Lords too? For if those Commissioners, were all Peers, who represented your *Barones minores*, or Tenants *in Capite*, (who, as you your self have granted, were no Lords at all) why might not those Lords as well represent all the Commons of England, as they did these lesser Tenants *in Capite*? So that it seems plain to me, that these Words, *Universitas Baronagij Anglicæ*, must needs then comprehend somewhat more than your Barons, and Tenants *in Capite* only; since the Words *Barones & Milites* alone had sufficiently expressed all the constituent Members of your Parliament, without adding *& Universitas Baronagii*, which would have been a Tautology.

But that it was very usual for the great Lords in those Days, to write Letters in their own Names, as also for all the Commons of England. I shall shew you by and by, when I shall make use of two other Instances of a like Nature, in the Reigns of Edw. I. and Edw. III. And therefore it is no good Argument to prove, that the Commons had no hand in this Message, or Letters, because they did not write by themselves; much less is it so, because it is not expressly mentioned by *Matt. Paris*, that the King consulted the Commons as well as the Bishops, Earls, and Barons, that therefore they were not there: Since this Author writing very concisely, comprehends all the Lay Estates, under the Words *Comites & Barones*, or else *Magnates* alone. So likewise *Matt. of Westminster*, when he mentions divers Parliaments in the Reign of Edw. I. and Edw. II. expresses them under the same Title. And tho'

tho' this Author often mentions the Earls and Barons to have done this, or that; yet it is no Argument to conclude, that the Commons were not then there. And for this, pray take these Examples out of *Matt. Westmister*; when *Anno Dom. 1300.* the 28th of *Edward I.* he tells us, the King held his Parliament at *Lincoln*, where the *Comites & Barones* demanded a Confirmation of the great Charters, and they further asked, that the Deforestations made by the King should be confirmed; and then he tells us, that *thereupon the Charters of Liberties and Forests, were again renewed; and being past under the Great Seal, were proclaimed before all the People, in every County*; where you see that the Complaints were made by the Earls and Barons; yet it is certain, that the Confirmation of these Charters, must have proceeded from all the Estates; tho' the Bishops, and Abbots, and Priors, who were then constituent Members of this Parliament, are not at all mentioned. Yet that they, as also the Commons were at this Parliament, will easily appear, if you please to consult the Clause-Roll, where the Summons are entred. So also *Henry de Knighton, Anno Dom. 1301.* the 29th *Edw. I.* tells us of a Parliament this King held at *Stamford*, where met the Earls and Barons, *and with great Courage persisted until they had got the Charter of Forests fully granted and confirmed to them.* Where note, that tho' by way of Excellency, the Earls and Barons (who then bore the greatest Sway, are here only mentioned) yet it is certain, that the Commons were also summoned to this Parliament. Now if these latter Historians pass by the Commons, tho' then constituent Members of Parliament, without any one express Mention, why might not *Matt. Paris* do so too?

Clans. 28. E.

But that he did so, appears very plainly from the Letters of the Parliament held in 30th *Hen. III.* to the Pope and Cardinals, being still at the Council of *Lions*, to remove the intolerable Grievances above mentioned. That to the Pope is recited at large by *Mat. Paris*, tho' that to the Cardinals is omitted by him; but in an Ancient Manuscript of the Time extant in Sir *John Cotton's* Library, both Letters are said to have been sent to the Cardinals at *Lyons, à Baronibus, Militibus, & Universitatibus Baronagii Angliæ.* Now who these were, the subsequent Letter to the Pope in *Mat. Paris* will inform us, which begins thus; *Sanctissimo, &c. Devoti filii sui Richardus Comes Cornubiæ, &c.* together with divers other Earls there named; but the Commons are not particularly recited, yet are comprehended under these general Words, *Barones, Proceres, & Magnates, ac Nobiles Portuum maris habituros, nec non & Clerus & Populus unversus Salutem*; and pray note, that *Matt. Paris* had before called this a Parliament, *Convenientibus igitur ad Parliamentum totius Regni Magnatibus*; which Words take in the Knights of Shires; as the *Nobiles, Portuum maris habituros*, do the Barons of the Cinque Ports; (which by the way are here called Noble, tho' mere Commoners.) And to obviate your Objection, that the Word *Clerus* after *Barones*, may refer to the Bishops, Abbots, and Priors, that could not be; for they at the same time had already writ Letters apart to the Pope, concerning this Matter; as you may see in the same Author immediately before. And therefore nothing seems plainer to me, than that by these Words, *Clerus & Populus Unversus*, must be meant the inferior Clergy, and Commons, appearing by their Representatives in this Parliament, and that so became *generalissimum Parliamentum*, as this Historian calls it.

Bib. Cott. Sub Effigie Cleopatri.

Mat. Paris, 696, 700.

Pag. 697

M. Pray give me leave now to reply.

In the first Place I must tell you, that the Instances you have brought out of *Matt. Westm.* to prove that under the Words *Comites and Barones, & Baronagium Angliæ*, were comprehended the Commons of *England*, and that after the Time I allow them to have been there, will not do your Business.

As to the Instance about the Pope's Nuncio, it seems to have been an Order of the Lords only; the Words being in *Latin, de Assensu Comitum & Baronum.*

As to the Third Instance out of *Knighton*, he said indeed, that the *Comites & Barones* met at the Parliament at *Stamford*; and that might very well be, since they alone then insisted upon the Confirmation of the Charter of Forests.

But as for the Argument you draw from the Direction of this Letter to the Pope: The learned Dr. in his Treatise against Mr. P. hath given us a very good Answer to it, to this Effect; that tho' it is true, that after the *Barones & Proce-* *Pag. 106.*
res, there are divers other Parties mentioned, yet was this Troop of Words put together in this Letter to no other purpose, than to make an Impression upon the

the Pope, and make him sensible what a general Dislike the Nation had of his Exactions and Encroachments, and to induce him to a Compliance with their Desires; the Multitude or Commons not being any-ways Parties, or privy to the writing of the Letters. For the Clamour of the People was a great Argument used in all these Letters, to affect the Pope, how ungrateful his Impositions were to the Nation. But in this of the Temporal Barons more especially, who address themselves to the Pope by Petition, enforcing it by the Clamour of the People, against those Injuries and Oppressions upon the whole Kingdom, it is to no purpose to repeat all that follows; only observe this Clause, *Alioquin necesse est ut veniant Scandala Clamore Populi, tam Dominum Regem, quam nos intolerabiliter impellente.* And the King likewise in his Letter to the Pope and Cardinals aggravates the Matter, by the like Arguments; as appears by this Clause, in his Letter to them; *verum Clamore incomparabilem Magnatum Angliæ tam Cleri quam Populi non possumus obaudire.* From this general Clamour of the People, and not from their being Parties, it was, that the Beginning of the Letters from the Baronage, or the University of England, was stuffed with so many Words and Phrases, to awaken his Holiness, and invite him to redress their Grievances.

F. In return to what you have said, I must tell you, that I am not convinc'd, that in the Parliament mentioned by *Mat. Westm.*, the Demand for the Confirmation of the Charters was made by the Lords only; since it is not likely that the Commons (who are there stiled *Divites Plebis*, and are said to have been grieved by their Infringement) should not have been Parties to the Complaint for their Redress; especially since we find that in all succeeding Parliaments, the Commons are mentioned as most eager for the Confirmation of these Charters.

But as for the most material Part of your Answer to my Authority from the Parliament's Letter to the Pope, I know the Dr. endeavours all he can, to avoid the Force of this Objection, by making the Parliament top upon his Holiness meer empty Words, instead of Matter; that is, according to the Dr.s' own Phrase, *they only laid an airy Ambuscade to intrap him.* But whether the old Gentleman was thus like to be caught, I give you leave to judge. For certainly both he and his Consistory of Cardinals, knew as well as the Parliament it self, what were the constituent Parts thereof, and they could quickly have answered them, that they put a meer Sham upon his Holiness, in mentioning the Noble Inhabitants of the Sea Ports, and all the rest of the People, both Clergy and Laity in their Letters; whereas they had nothing at all to do with the Matter, nor had shown any dislike of his Holiness's Proceedings. For if they had no Representatives in Parliament, how could it be known whether they were aggrieved or not? Or is it likely the Pope had no Nuncio, or Friends, among the Clergy, to give him an Account of the Cheat they there put upon him? And they might as well have talked of the Clamours of the Tinnors in *Cornwall*, as of those of the Inhabitants of the Sea Ports, if it was only put in to augment the Clamour, or to fill up the Number of the Complainants; if the People (I mean both Nobility and Commons) had not been Parties to these Letters. And you your self have but now recited a Clause in the King's Letter to the Pope and Cardinals, which makes it plain it was so; when he tells them, that he could not stop his Ears against the Clamour of the *Magnates, tam Cleri, quam Populi, i. e.* as well of the Clergy, as of the Laity, as the Dr. renders it. So that these Words, *Clamore Magnatum*, must signify here the Clamour or Complaint of the whole People in Parliament; or else they signify nothing at all.

And I may as well say that the *Clerus* and *Populus* never appeared in Parliament at all, but that these were also meer empty Words to frighten the Pope. But what say you to the next Precedent Mr. P. produces to prove that the Lords and Commons together have writ Letters to the Pope, when he attempted to invade the Right of the Crown or Kingdom, *viz.* The Letter from the Parliament at *Lincoln* to the Pope, in the 29th of King *Edw. I.* wherein they assert the King's Superiority over the Kingdom of *Scotland*, and desire that his Holiness would desist from meddling farther with it. Which Letter, tho' subscribed by above a Hundred Earls and Barons, as it was the Custom of that Age, yet it is said expressly in the Conclusion, *In cujus rei Testimonium Sigillatam pro nobis, quam pro tota Communitate predicti Regni Angliæ presentibus sunt appensa.*

P. R. C.
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Mat. Westm.
Anno Dom.
1301.

M. Tho'

M. Though this Authority is after the Time we acknowledge the Commons to have been summoned to Parliament, and therefore I need not speak particularly to it; yet I grant your Argument hath some Weight in it, since it here seems, that the Lords did Sign this Letter, for the Commons, as well as themselves: I shall therefore endeavour to Answer it. I confess it appears very specious at first sight; but what if I shew you, that this Letter was written by the Lords only from *Lincoln*, after the Commons had been dismissed from thence by Prorogation or Adjournment? For though it is commonly story'd, (but erroneously) that this whole Parliament, or at least the Temporal Lords, and the Commons, wrote to the Pope concerning the Jurisdiction and Superiority of the Kings of *England* over the Kingdom of *Scotland*: Yet it cannot be so; for this Parliament met on the *Oblaves* of *Hillary*, or the 20th of *January*, and sat but Eight Days; the Writs for the Commons Expences bear Date *January* the 30th of the same Year; and the Letter to the Pope, signed by the Temporal Lords for themselves, and the whole Community of the Kingdom of *England*, is Dated *February* the 12th next following at *Lincoln*, after the Commons had been discharged Fourteen Days. So that you see the Barons still continued to stile themselves the Community of *England*; and both Spiritual and Temporal Barons, and others of the King's Council, did stay and dispatch much Business, after all others were dismissed, according to the Tenor of the there recited Proclamation, and may be fully proved from the Proceedings of that Parliament, as they are to be found in *Ryley's Placita Parliamentaria*. So that nothing seems plainer to me, than that the whole Community of *England*, for whom the Barons there named set their Seals to that Letter you mentioned, were the Community of the Barons only.

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Vid. Pryn's 4th
Part of the Re-
gist. of Parli-
ament Writs.

Fol. 241, &c.

F. I confess Mr. Pryn, in his Animadversions upon my Lord Coke's Fourth Institute, was the first who started this Objection, That the Commons could not be present as Parties to this Letter. Yet he still supposes that the Lords who staid behind, and made a kind of a Great Council at *Lincoln*, Signed it not only for themselves, but for the Commons also, though not actually there; and is not so extravagant as your Doctor, to suppose, that by the Words in this Letter, *Tam pro Nobis, quam pro tota Communitate*, &c. are to be understood the Community of Barons only; for that would have been a Tautology indeed: For so the last Words, *Communitas Regni*, &c. would have signified no more than that they subscribed for themselves, and themselves; and that the Word *Communitas Regni*, (which I can prove to you by many Examples, did then comprehend the Commons of *England*) must here mean more than your Community of the Earls and Barons. For pray take Notice, that the *Tenants in Capite*, had now by your own Concession, left off to appear in Parliament in a Body, as being now represented by the Knights of Shires, &c. So that Sir Edward Coke very well observes in his Fourth Institute, that this Letter was Sealed by above One Hundred and Four Earls and Barons, yet it was by the Assent of the whole Commonalty in Parliament; and Mr. Pryn is so far convinced of this in his exact History of Papal Usurpations, that he stiles this Letter, *The Memorable Epistle of the Earls, Barons, Great Men, and Commons of England*, &c.

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But to shew you farther that there was no Change, neither of the constituent Parts of our Ancient Parliaments, nor of the Terms by which they are expressed in our Ancient Records, appears by a Plea among Mr. Ryley's Printed Pleas of Parliament, in the 35th of *Edward I.* where it is recited, that in the Parliament at *Carisle*, *Will de Testa*, the Pope's Clerk, was Impeach'd *per Comites, Barones, & alios Magnates, & Communitatem totius Regni*, concerning divers new and intolerable Grievances laid upon them by the Pope: Where you see there is no Change of this Word *Communitas*, after the Commons were (as you suppose) certainly present in this Parliament; and why the same Word should not signify the same Thing in the beginning of this King's Reign, as well as now, you had need give me very good Authority to prove the contrary against such clear Evidence as this. But this Record goes on, and farther recites, that these Letters were sent to the Pope, *Ex parte Communitatis predictæ*; and in which, *Clerus & Populus dicti Regni*, set forth the said Grievances to the full. Now, as the Word *Clerus* here expresses all sorts of Degrees of Clergy, as well Superior as Inferior, represented in Parliament and Convocation, so must *Populus* here signify the Laity of both Orders, as well the Commons as Lords, since the Commons were certainly present at this Parliament; and why the Word *Populus* should not signify

Fol. 376.

signify the same Thing long before, I can see no Reason for it, but the Doctor's bare Assertion.

And as for what you say, that the Commons could be no Parties to this Letter, because it appears by the Writs of Expences, that they were discharged before this Letter was written; admitting it were so, it makes nothing against my Assertion. For why could not the Commons agree upon the Substance of the Letter, and leave the Lords to draw it up, and subscribe it for them, after they were gone Home? And that it was so, appears by the Letter it self, which recites, *That the King had caused the Pope's Letter, In medio, or pleno Parlamento exhiberi, ac seriose nobis fecit exponi unde habito tractatu, & deliberatione Diligenti super contentis in literis vestris memoratis, communis concors, & unanims omnium, & singulorum consensus fuit, &c.* Now every one knows, that understands any thing of Parliamentary Affairs, that when any Thing is said in an Act of Parliament, or other Record, to have been agreed upon in full Parliament, that is always understood to have been done, all the Estates being there present. Nor can I see any Reason why this Letter should not be called the Letter of the Commons, as well as of the Lords, since the very Statutes of that Age were often said to have been assented to by the Commons, though it is clear they were not drawn up into Form till after the Parliament was dismissed.

But that the Commons were certainly Parties to this Letter, appears by a Record of the beginning of Edward the III^d's Time, Printed by Mr. Pryn, then Keeper of the Records of the Tower, (and which he tells us he found among the Rolls in the White-Tower) which Record contains the Heads of a Defence compiled by the King's Council, in order to a stronger Plea against the Pope's taking Cognizance in the Court of Rome, concerning the King of England's Superiority over Scotland; in the Conclusion of the Second of which Records, there is a remarkable Article relating to this very Letter now before us, in these Words, *Item ad finem quod Nobiles Regni Anglie & Procuratores Communitatis subditorum Regni prædicti admittantur per ipsum Dominum Regem ad hujusmodi defensiones proponend. prout eorum Antecessores ab Avo dicti Domini Regis nostri erant admissi.* Now to what Transaction of this kind, in the Reign of Edward I. this King's Grandfather, can this Passage refer, but to this very Letter, which was assented, as well per *procuratores Communitatis Regni*, as by the Barons, here called *Nobiles Regni*? And this Application thereof is given by Mr. Pryn himself, when he makes Use of these Records.

But to let you see farther, that the Lords and Commons, for all this Author's Opinion to the contrary, might join in a Letter to the Pope, I shall shew you by that which was writ in the Name of the whole Parliament to the Pope, in the 17th of Edward III. about the Provisions of Benefices, which then grew so exorbitant, that Walsingham tells us in his History, *Quod Rex & tota Nobilitas Regni pati noluit, &c.* which Phrase the Letter it self will best explain. The Beginning and Conclusion of which I shall give you in English, as you may find it in Mr. Fox's Book of Martyrs.

To the Most Holy Father in God, Lord Clement, by the Grace of God, of the Holy Church of Rome, and of the Universal Church, Chief and High Bishop, his Humble and devout Children, the Princes, Dukes, Earls, Barons, Knights, Citizens and Burgeses, and all the Commonalty of the Realm of England, assembled at a Parliament holden at Westminster, the 15th of May last past, &c. In Witness whereof we have hereunto set our Seals. Given in the full Parliament at Westminster, on the 18th Day of May, Anno Dom. 1343.

And it still appears by the Parliament Roll of this Year, viz. 17th Edward III. n. 59. that the Commons Petitioned the King, that the Lords might stay at the Parliament till they had perfected and Seal'd this Letter.

And that there was such a Letter then written by the Parliament, appears by the King's Letter to the Pope about the same Matter, still among the Tower Records; (in which he imitated his Grandfather, Edward I. and Great Grandfather Henry III. who also sent Letters to the Pope on such like Occasions); but in those to excuse the Archbishop of Canterbury from being the Author of those Complaints, he had this Passage, that since it was the Judgment, *tam Procerum & Nobilium, quam Communitatis Regni in ultimo Parlamento contra Provisorum Exercitum.*

Pryn's Exact
History,
Page 895.

P. R. C.
Page 119.

Vita Edw. III.
Fol. 161.

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501.

Tit. Rot. Ro-
ma 17. Edw.
III. m. 3. i

To conclude; I think nothing is plainer, than that under the *Universitas Regni*, in the First Letter to the Pope, the 29th of Henry III. and under the *Communitas Regni*, mentioned in the Letter of the 29th of Edward I. were meant the same Estates or Orders of Men, as were more particularly recited in this present Letter, under the same Words; viz. The Temporal Lords and Commons in Parliament Assembled.

M. I must freely tell you, I am not yet satisfied with the Sense you now put upon these Words, *Universitas*, and *Communitas Regni*, before the Commons were summoned to Parliament; for you your self must grant, that as the Word *Universitas Regni* takes in the whole Representative Body of the Kingdom, so likewise the Word *Communitas* signifies no more than the same whole Body or Community thereof. Therefore if I prove to you, that in those Times this University or Community consisted only of the *Earls*, *Barons*, and *Tenants in Capite*, that Word *Communitas Regni*, ought never to be interpreted by the English Word *Commonalty* or *Commons* of England, till after the Time that I allow the Commons were admitted to make a constituent Part of the Great Council or Parliament, nor always then neither. And Mr. P. in his Book which we have so often cited, hath done very unfairly to make the *Universitas* and *Communitas Regni*, to signify the Commons of England, before they ever appeared in Parliament at all; and so hath he likewise abused the Word *Populus*, as I have already observed, to signify the Commons, when indeed there is nothing thereby meant, but the whole Assembly of the Laity, which at that Time consisted of no more than the *Earls*, *Barons*, or other *Tenants in Capite*. And though I grant that by *Communitas Prelatorum*, or *Baronum*, are often understood the Body of the Prelates or greater Barons only, called by way of Eminency, *Proceres* & *Magnates*; yet most frequently, these, with all the other *Tenants in Capite*, did make the whole Body of the King's immediate Tenants in Military Service, and were all together called the Baronage of England, or the Community of the Kingdom; and for this I think I shall give you undeniable Proofs by and by. B. A. P.
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F. I am very well aware that the Word *Populus* often signifies the whole Body of the Laity, yet not excluding the Commons, as I have already sufficiently proved. For then the Word must signify quite contrary to its genuine Signification; instead of People, the Greater Nobility only; yet when that Word is put after, as distinct from *Magnates*, it must mean the Commons as now understood, I shall now shew you.

For that this Word *Populus* does not always signify the whole Body of the Nobility only, but takes in oftentimes the Commons too, pray see *Matt. West.* who tells us, King Edward I. in the 34th Year of his Reign, making his Son a Knight, *Pro hac militia filii Regis concessus est Regi Trigesimus Denarius a Populo & Clero, Mercatores vero viceesimum concesserunt*: Upon which your Doctor in his Glossary very well remarks, that it is evident upon Record, who were the *Populus* meant by the Historian, viz. the *Comites*, *Barones*, & *alii Magnates, nec non Milites Comitatum*. So that unless the Knights of Shires were Lords, it is plain *Populus* takes in the Commons too. But *Universitas Regni*, and *Communitas Regni*, called in French *le Commune D'Angleterre*, is indeed often taken for the whole Community, or Body of the whole Parliament; and this Sir Edward Coke owns expressly in his Second Instit. upon these Words, *In Articulis super Chartas*: Thus (says he) here *Le Commune* is taken for People; so as *tout le Commune* is here taken for all the People; and this is proved by the Sense of the Words. For *Magna Charta* was not granted to the Commons of the Realm, but generally to all the Subjects of the Realm, viz. to those of the Clergy, and to those of the Nobility, and to the Commons also. Fol. 55.
Page 539.

And this is a Rational as well as Grammatical Interpretation: For as the Word *Universitas* is derived from the Adjective *Universus*, which signifies the Whole, or Universal: So the Word *Communitas* is derived from the Adjective *Communis*, Common or General. So that these Two Words, when used simply in a Political or Legal Sense, ought to take in the whole Body of the Kingdom, or all Sorts and Conditions of Freemen, appearing themselves, or by their Lawful Proxies or Representatives, in Parliament.

But I have already sufficiently proved, that under those General Words used in our Historians and Records, viz. *Principes*, *Proceres*, *Nobiles*, *Magnates*, *Barones*, & *alii de Regno*, were then comprehended either all the considerable Freeholders,

or Lords of Manors, or else the Knights of Shires, Citizens and Burgeffes. So that if the Sense of these Words have been sufficiently explained, I think no reasonable Man can have any Cause to doubt, whether these Abstract Words, *Nobilitas*, *Universitas*, and *Communitas*, should be taken for all Sorts and Degrees of Men, when thus represented in the Great Council; or whether they shall be confined to the Greater or Lesser Nobility only, viz. the Great Lords, Bishops, and *Tenants in Capite*, as you would make me believe, which requires stronger Proofs than what you have yet brought.

Besides which Sense of this Word *Communitas*, or *le Commune*, it is also more commonly used at this Day, and often then too, in another more restrained and legal Sense; and that is, when it is used for the *Commonalty* or *Commons of England*, distinct from the Peers; and this may very easily be distinguished, by observing, that when it is taken in this Sense, it is always set after the particular Enumeration of the other Orders of the Lords or Peers, viz. the Archbishops, Bishops, Abbots, Priors, Earls and Barons; or when it is put contradistinct to the Word *Magnates*. I shall give you some Authorities and Examples from Historians and Records of both these; and that in the Times preceeding those that you allow the Commons to have been summoned in Parliament. Of this Sort is that which *Matt. Westminster* mentions as a Parliament held the 37th of Henry III. and which is thus recited in the Patent Roll of this Year; where, after the Excommunication denounced against all Infringers of *Magna Charta*, there is this solemn Clause added, That if to the Writing concerning the said Sentence, any other Thing, or in any otherwise should be added thereunto, besides the Form of the said Sentence then to be denounced and approved of; that then *Dominus Rex, & prædicti Magnates, & Communitas Populi Protestantur publice* before all the Bishops, that they would never consent thereto; and conclude thus, *In cujus Rei Testimonium, & in posteram Veritatis Testimonium*, the King, the Earls of Norfolk, Hereford, Essex, and Warwick, *Petrus de Sabaudia, ad Instantiam aliorum Magnatum & Populi Prescripti, sigilla sua apposuerunt*; where you may see, that it was usual before the 49th of Henry III. for those that were Peers to put their Seals for the *Communitas Populi*, or Commons.

M. I pray give me Leave to answer your Authorities as you bring them, lest I not only forget some of them, but also tire both you and my self with too long a Discourse. I hope I am very well able to prove, by the Learned Doctor's Assistance, that the *Communitas Populi*, here mentioned, doth signify not the Commonalty or Commons, but the Community of the Laity there present, consisting of the Greater Barons, or else of the Less, or *Tenants in Capite*. And for Proof of this, pray take Notice, that *Matt. Paris* called this Council *Tota Anglie Nobilitas*. And in this Parliament the King demanded a great Sum of Money of them, after much Contest, and upon Promise to reform all Abuses, according to the Tenure of the Great Charters; thereupon the same Author tells us, *The Church granted the Tenth of the Revenue for Three Years, and the Knights (or Nobility) granted for that Year Scutage*; to wit, *Three Marks of every Scutum, or Knights Fee*. And then the Archbishops and Bishops in their *Pontificalibus*, with light Candles in their Hands, in the Presence, and with the Assent of the King, the Earl of Cornwall, his Brother, and several Earls there named, *& aliorum Optimatum Regni Anglie*, and other Chief Men of the Kingdom, Excommunicated and cursed all those that from thenceforward should deprive the Church of her Right, and all those that should change, alter or diminish the Liberties of the Church, and Ancient Customs of the Kingdom, especially those granted in the Great Charter of the Common Liberties of England, and Charter of the Forest granted by the King, *Archiepiscopis, Episcopis, & cæteris Anglie Prælatibus, Comitibus, Baronibus, Militibus, & Liberè Tenentibus, &c. i. e.* To the Archbishops, Bishops, and other Prelates of England; and to the Earls, Barons, Knights and Free-Tenants, or *Tenants in Military or Knights Service*: For they only were such as paid Scutage, which was at this Time a kind of Composition with the King, for the confirming *Magna Charta*, and was never charged but upon Knights Fees; and these were such that held perhaps one narrow or scanty Knights Fee only; or some part of a Knights Fee; as an Half, Third, Fourth, Sixth, Eighth Part, &c. who all paid a Proportionable Share of Scutage to the Great Lords, or *Tenants in Capite*, for the Land they held of them in Military Service; which was paid first to the Great Lords, and by them paid to the King.

And

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& deim.

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And from thence I collect, that besides the *Barones Majores* that came to this great Council or Parliament, there were also the *Tenants in Capite*, according to the Directions and Law for Summons in King *John's* Charter, who were comprehended under the Words *tota Nobilitas, & Milites*; and that other Tenants that held of the *Tenants in Capite* by Knights Service, were bound by their Acts, for they all knew how many Knights-Fees they held of the King *in Capite*; and if they had given any away to others, they held of them as they did of the Crown, and answered a proportionable Rate towards this Tax, for the Fees, Quantities or Parts of Fees they held of them; about which there could be no Mistake after the Scutage was ascertain'd. So that in so great an Assembly, where all the Nobility of *England* were called together by the King's Writ, and upon so great an Occasion and Solemnity, as confirming the great Charter of Liberties after such an extraordinary Manner, it cannot be doubted, but besides the Barons, all the *Tenants in Capite*, both Great and Small, which were then very numerous, were present, or at least, most of them; from whence it is not difficult to tell you who the *Communitas* were; after the *Prelates, Barons* and *Magnates*, they were no other than the small *Tenants in Capite*, who were all summoned by one general Writ, not chosen and sent by the People, but summoned as the great Barons in general, by King *John's* *Magna Charta*, as I shall shew you hereafter.

E. I hope I shall be well enough able to prove, that what you have now alleged is pure Imagination, or in the Dr.'s Phrase, an *airy Ambuscade*, and quite contrary to the Sense of *Mat. Paris*, as also of the Lawyers and Historians of those Times. For in the first Place, nothing is plainer, than that this Author by the Words *Communitas Populi*, must understand an Order of Men distinct from the *Magnates*; or else if the Word *Magnates* might have comprehended them all, it would have been to no Purpose to have mentioned any more.

But to answer those Authorities you bring from *Mat. Paris*; as for the Word *Nobilitas*, since you still insist upon it, I have already proved that the whole Parliament, as well the Lords Spiritual and Temporal, as Commons, were both before and after this Time comprehended under these Words, *Nobilitas Angliæ*; and if you yet doubt of it, I can give you a plain Authority out of *Walsingham*; for it is in his Life of *Edw. II. Anno 1327.* where relating the Manner of that King's Deposition, he tells us, That when the Queen and Prince came to *London*, there then met *Tota Regni Nobilitas*, to depose the King, and chuse his Son in his Stead; and he presently shews what this *Nobilitas* was, for then there was sent to the King, (being Prisoner in *Kenelworth* Castle,) on behalf of the whole Kingdom, Two *Bishops*, Two *Earls*, Two *Abbots*, and of every County Three *Knights*; and also from *London*, and other Cities and great Towns (especially the Cinque Ports) a certain Number of Persons, who informed him of the Election of his Son, and that he should renounce the Crown and Royal Dignity, &c. This Proof is so plain, it needs no Comment.

As for the rest of your Argument, the Strength of it chiefly consists in this, that the Tax there mentioned is said to be granted à *Militibus*, or *Tenants in Capite*, (as you would have it) of Three Marks upon every Knight's Fee. But in the first Place I desire you to take notice, that this Scutage is not Scutage Service, but a general Land Tax, or Manner of taxing according to Knights Fees, and which was continued long after *Hen. III.* Reign as it appears by this Passage in Sir *Henry Spelman's* Glossary, *Tit. Scutagium; Edwardus primus habuit 40 Solidos de quolibet Feodo Anno Regni 13 Dom. 1285. pro Expeditione contra Wallos.* And it was also granted by the Lords and Commons after the 18th of *Edw. I.* when you and the Dr. suppose the Commons to have then come to Parliament; and if so, I desire to know why à *Militibus* here mentioned by this Author, must only signify *Tenants in Capite*, by Knights Service, and not Knights of Shires; or other inferior Tenants by Military Service; since it is not here said à *Militibus qui de Regne tenuerunt in Capite*; and therefore it is a forced Interpretation of the Dr.'s, and without any Authority, to limit these Words *Militibus, & liberè Tenentibus, & omnibus de Regno nostro* (which you omit with an &c.) as also the *omnibus Homini-bus Liberis Regni nostri*, only to the *Arch-Bishops, Bishops*, and other Prelates of *England*, and to the *Earls, Barons, Knights* and Free Tenants, or Tenants in Military or Knight's Service; because they were only such as paid Scutage; whereas you have already acknowledged that *Magna Charta* was granted to all the Peo-

ple of *England*, who had all a Benefit by it, and who paid towards the Aid there granted, as well as the *Tenants in Capite*.

But if Knights Fees alone were taxed, and that by the *Tenants in Capite* only, I desire to know by what Right all Tenants in Petit Serjeanty, and by Burgage or Soccage Tenure (who made a greater Body of Men in this Kingdom in those Times) could pay this Scutage, since they held not by Knights Service, but by certain Rents or other Services, and so not appearing in Person, could have no Representatives in this or any other Parliament of those Times. But if you will tell me they might pay according to the Value that Knights Fees were then reckoned at, *viz.* for every 20 *l.* a Years Estate; I desire to know how this could be called Scutage, or how the *Tenants in Capite*, or other Lords from whom they held those Lands, could give away their Money for them. And in the next Place I desire also to know how all the Cities and Boroughs in *England* could be charged with this Tax; a great many of them (as you your self grant) holding of the King *in Capite*, or else of Bishops, Abbots or other mesne Lords by Soccage or Burgage Tenure, so that this Tax, if granted only by the *Tenants in Capite*, by Knights Service, could reach them, and no other Persons; but if by this Word *a Militibus* may be understood Knights of Shires, then the Tax was general, as well upon Soccage Tenants, as those by Knights Service.

But for the other Words you insist upon, *viz.* the *Liberi Tenentes*, which you translate *Tenants* by *Military Service*; if that had been the Meaning of these Words, then they had been altogether in vain, since you have already told me, that the *Milites* were so called, *non a Militari Cingulo, sed a Feodo*; and if it were no Name of Dignity, then certainly the Word *Milites* would have served to comprehend all your *Liberi Tenentes*, or *Tenants in Capite*, without any other Addition. But that these Words *Liberi Tenentes*, do not here signify *Tenants* by *Military Service*, pray see Sir Henry Spelman's Glossary, *Tit. Liber Homo, & liber Tenens*; where he there gives us a more general Signification of these Words thus, *Ad Nobiles olim spectabant isti Tituli, à majoribus ortos omnino Liberis*; and then ends thus, *vide Ingenius, Legalis, Homo Francus, Tenens Liberè, alias Liber Tenens quo etiam Sensu occurrit interdum Homo liber*; which upon every one of these Titles he makes to signify all one and the same Thing, *viz.* an ordinary Freeholder. And therefore it is a very forced Interpretation of yours, to limit these Words *Communitas Populi*, only to the Community or Body of the Earls, Barons, and *Tenants in Capite*.

Tho' I confess you are very kind in one main Point, in understanding the *Communitas Populi* to mean the Community of the Lesser *Tenants in Capite*, that were no Barons; and then do what you can, these Words must here signify meer Commoners, or Commons, unless you can shew us a Third Sort of Men, who, tho' neither Lords nor Commons, yet had a Place in Parliament. So that these Gentlemen, notwithstanding their Tenure, were no more Noble than their feudatory Tenants, or Vassals themselves; nay, than the Knights of Shires are at this Day: And then granting (as I doubt not but I shall be able to prove) that the Cities and Boroughs had then also their Representatives there; I pray tell me whether or no there were not Commons in Parliament before 49 *Hen. III.* or not. Which is contrary to your Dr's Assertion in divers Places of his Answer to Mr. P.

And that the Word *Populus* must here signify the Commons, and not the whole Body of the Laity, appears plainly by this Place you have quoted; since it is restrained by your self, to mean not the whole Community of the Kingdom, but only the Community of Lesser *Tenants in Capite*, who were not Lords. But that *Matt. Paris* doth also in another Place take the Words *Populus* for the Commoners, and not for the whole Body of the Laity, pray again remember what he says under *Anno 1225.* where relating the Manner how *Magna Charta* came to be confirmed in 9th *Hen. III.* he tells us, *Rex Henricus ad Natale tenuit Curiam suam apud Westm. Presentibus Clero, & Populo, cum Magnatibus Regionis*; which pray let us put into *English*, and see if it will not prove what I say, *viz.* The Clergy and People being present with the Great Men of the Kingdom. Now if the Word *Magnates* (as you affirm) did then comprehend all the Barons and *Tenants in Capite*, to what Purpose is the Word *People* put here as a distinct Member of this Parliament? But to shew you farther that this Word *Populus* is not always to be understood for the whole Body of the Laicks, but Lords and Knights of Shires, I shall shew you

out of *Walsingham*, Anno 1297. 24th Edw. I. where he mentions a Parliament held at *St. Edmundsbury*, in quo a Civitatibus, & Burgis concessa est Regi Octava, à Populo vero relique duodecima pars Bonorum : Where by *Populus* is not only meant the Peers, but Knights of Shires, or *Grands des Countees* also.

M. I am not prepared at present to answer all the Queries and Difficulties that you can make or raise against the Dr's Arguments ; yet I think I am able to give you a very satisfactory Answer why all Tenants in Soccage should be bound by the Acts of those of whom they held their Estates. For since (as I have already proved) all the Lands in *England* (except what belonged to Religious Houses) was granted out by King *William the Conqueror*, to be held *in Capite* by Knights Service, and was again granted out by these Head-Tenants, to their feudatory or mesne Tenants by the like Services, there were very few Lands granted in Free-Soccage at the first. And tho' it is true that in process of Time, many of those Estates and Lands became Free Tenements, or were holden in Soccage, that is, were Freeholds, yet the Lords still retained the Homage (which in the Times we speak of was no idle insignificant Word) and by that a Dominion over the Estate ; whereby upon Disobedience, Treachery, or Injury done to the Lords, the Lands were forfeited to them ; and tho' neither the Lands nor the Tenants to them (which were termed Freeholders) were subject to any base Services, or servile Works ; yet the Lords had still a great Power over these Tenants, by reason of their doing Homage to them ; for *eo nomine*, their Lands were many ways liable to Forfeiture ; and therefore it was but reason, that the chief Lords being Tenants *in Capite*, should conclude their Tenants in Soccage also, and both make Laws and give Taxes for them, without their being at all privy to it. But admitting I grant, that before the 49th of *Henry III.* there were in some Sense Commons in Parliament, tho' not as Knights, Citizens and Burgeesses, chosen by the Common People as their Representatives ; yet will it not destroy mine, nor the Dr's Assertion ; who in the Introduction before the Answer to Mr. P. only affirms, *That before the 49th aforesaid, the Body of the Commons of England, or Ordinary Freemen (as now understood, or as we now call them) collectively taken, &c. had not any Share or Votes in making Laws, unless as they were represented by the Tenants in Capite.*

B. A. J.

F. Be it so ; but I am sure in many Places of the Dr's Book, he absolutely denies, that there were any Commons in Parliament, till the Time he assigns.

vid. B. A. P.
P. 12, 21, 29,
32, 72, 82.

But as for what you alledge in Answer to my Queries, how Tenants in Soccage could have Laws made for them, and Taxes laid upon them by their Lords or Tenants *in Capite* ? Your Answer is wholly grounded upon Mistakes : For in the first place, King *William* did not grant all the Lands in *England* to be held of him by Knights Service ; since (as I shall prove hereafter) there were many subordinate Tenants to Bishops, Abbots and other Great Lords, who never forfeited their Estates at all, nor were disseized of them by your Conqueror, and who had also great Numbers of considerable Freeholders under them ; as in *Kent*, the greatest Part of the Land was *Gavelkind*, which was Soccage Tenure.

In the next Place, neither were all the Lands he bestowed upon his Followers granted to be held by Knight's Service ; since you your self own that a great deal of Land was given by him to his Inferior Servants, to be held by Petit Serjeanty, and other Tenures ; and besides this, a great deal of other Lands was regranted by that King himself, to some of those old Proprietors who had been dispossessed, to be held in Soccage ; as appears from *Fleta*, who speaking of these Sort of Men, says expressly ; *In hujusmodi maneris [scilicet Regis] erant Liberi Homines, Liberi Tenentes, quorum quidam cum per Potentiores a Tenementis fuerant ejeti, eadem post modum in Villenagium tenenda resumpserunt ; & quia hujusmodi Tenentes cultores Regis esse dignoscuntur, provisum fuit quies, ne sedas fecerent ad Comitatum, vel Hundredum, &c. — quorum Congregationem tunc Soccam appellarent, hinc est quod Socmanni hodie dicuntur, &c.*

Where you may see that these Socmen, or Soccagers were then created by a new Tenure from this King ; and are also called *Liberi Tenentes, Freeholders*, which is contrary to your Dr's Notion, who would confine the Title only to his Tenants *in Capite*. Nor did all the Tenants last mentioned grant their Lands to others to be held by Knights Service, since they as well as the King did at first, as also in process of Time, grant Lands to the old *English* Proprietors to be held of them in Soccage ; nor was Homage the proper, or only Branch of Soccage Tenure, but Fealty;

Fealty; (unless the Land had been held by Knights Service at first) as you may see in *Littleton's Second Book*, Sect. 118. Nor did this *Soccage Tenure* give the Lord any more Right over his Tenants Estate, to Tax him *de a'to & basso*, at his Will, by reason of the Subjection he was in to the Lord, in respect of Forfeiture; since then the King should have had for the same Reason, the same Right over all his *Tenants in Capite*, to Tax them likewise at his Pleasure. And this Right of Forfeiture in case of Felony, or for want of Heirs, continued to the Lords as well of *Soccage Tenants*, as others, long after the Time you assign for the coming of the Commons to Parliament, even to our own Times; and yet for all that, those Lords could not give Taxes for such *Tenants in Soccage* at their Pleasure.

43th Hen. III.
m. 6. verso.

But that we may proceed, pray consider also the Form of the Peace agreed upon between King *Henry III.* the Prince his Son, and the whole Body of the Kingdom, Asssembled in Parliament, to compose all Differences between the King and the Barons: The Title of which in the Record is thus; *Hæc est forma Pacis a Domino Rege & Domino Edwardo filio suo, Prælati, & Proceribus omnibus cum Communitate totâ Regni Angliæ Communitèr & Concorditèr approbata.* Which Articles were signed by the Bishop of *Lincoln*, the Bishop of *Ely*, Earl of *Norfolk*, Earl of *Oxon*, *Humphry Bohun*, *William de Monte Canisio*, & *Majore London*; in *Parlamento London Mense Junii Anno Domini 1264.* *Hæc autem Ordinatio facta est London de Consensu, Voluntate, & Precepto Domini Regis, nec non Prelatorum, Baronum, ac etiam Communitatis tunc ibidem presentium.*

B. A. P.

M. I think the Doctor hath given us full Satisfaction as to this Record, in his Answer to Mr. P. the Substance of which I shall here give you in short.

First, It is certain, that at the making of this forced Peace, *Simon Mountford*, and his Faction, then held the King and Prince, as also *Richard Earl of Cornwall*, the King's Brother, as good as Prisoners, and made them do what he pleased; and he carried the King and Prince along with him, until he had taken in all the strong Places of the Kingdom; and when he had done, then he called this Parliament, which could not be one in the Sense it is now taken, since there were none there but the Earls, Barons, and Heads of the Rebels, which had the King and Prince in their Power, and (as you your self set forth) were the same Persons that Sealed it for themselves, and the other Barons, and the whole Community of the Kingdom of *England*; which Community must be the Community of the Barons and Great Men, or *Tenants in Capite*, by Military Service, and no other; for how can the Lords and Barons sign any Thing for the Commons, as at this Day understood? They did not then, nor now do represent them.

B. A. P.
Pag. 81.

But I shall give you another Authority, to make this clearer, of some Years before, related in *Matt. Paris*, viz. *Anno Dom. 1258*, 42d *Henry III.* where Letters are said to be sent, *a Communitate Angliæ*, to the Pope, concerning *Amyer de Valence*, Bishop Elect of *Winchester*; the Direction is thus, *Sanctissimo in Christo Patri, &c. Communitas Comitum, Procerum, Magnatum, Aliorumque Regni Angliæ cum subjectione debita, Pedum Oscula, &c.* And to put the Matter beyond all Doubt, it is certain that these Letters were sealed by Six Earls, and Five Barons only, *vice totius Communitatis*. I need not give you their Names, since you may find them in the Author himself, as also cited by the Doctor. And as for *H. Bigod*, the Chief Justice, and the Four Persons named after him, they are proved by *Sir William Dugdale*, in his *Baronage of England*, to have been the Greatest Barons in the Kingdom.

Now pray let me ask you this Question: Did these Eleven Persons, all Great Earls and Barons, represent the whole Commons, or Community of *England*, as at this Day understood; or did they represent the Community of the Barons only, together with the *Alios*, the *Milites*, which held by *Military Service* of the Great Barons, and the Less *Tenants in Capite*? for the whole Community here intended, must be one of them; take which you please, you'll lose the Cause. For certainly these Great Earls and Barons that sealed this Letter, *vice totius Communitatis*, were not chosen nor sent by the Commons to this Parliament or Meeting; nor were the Commons represented as at this Day by them, as you your self have already granted.

F. I hope I shall not need to make any long Reply to this Answer of yours, or rather of your Doctor's, since it is built upon the same false Supposition with the other, viz. that the Words *Cum Communitate totâ Regni Angliæ*, must always mean only the Community of the *Tenants in Capite*; which Supposition, if it be false in
your

your former Argument, is also as false in this of the *Lords* and *Commons* too; and therefore it is impertinent to repeat my Answer to it.

But if this were no true *Parliament*, because *Simon Mountford* had then the King and Prince in his Power; this would likewise serve to Unparliament that of the 49th of this King; from whence the Gentlemen of your Opinion date the first coming of the *Commons* to *Parliament*; since the King and Prince were as much in *Simon Mountford's* Power then, as now; and yet no Man as I know of, ever questioned the Validity of it; though I cannot also omit, that you pass by in this Letter, the Words *Magnatum aliorumque Regni*; under which Words, (as I have already proved) might very well be comprehended all the Knights of Shires, as well as Citizens and Burgesses; unless the Words had run thus (as they should have done to have made out your Assertion) *aliorumque qui de Rege Tenent in Capite*.

But to come to the main Point you insist upon; which is, How these Great *Earls*, and *Barons*, could seal this Form of the Peace, and these Letters to the Pope, in the Name of all the *Commons* of England?

Before I answer to that, I pray give me Leave to ask you one Question. You have already allowed that the ordinary *Tenants in Capite*, (of which that numerous Body chiefly consisted) though called by Courtesy *Barones Minores*, were really no *Barons*, nor Peers of the Realm; and if so, were but Commoners. Now pray tell me how these Great *Earls* and *Barons* you mentioned to have Signed this Peace, and this Letter to the Pope, could put their Seals for those who were no *Barons* themselves, by your own Confession; and you cannot say they represented them, for they were as good *Tenants in Capite*, as the Greatest *Lords*? But if you say they did it by their Order and Consent, pray why might not these Great *Lords*, or *Barons*, as well do the like for the Knights of Shires and Burgesses, by their Appointment? Since I have already proved, that the *Lords* did act thus in the Letters which were sent to the Pope concerning the Business of *Scotland*. And besides, I must here observe, that the Doctor and you do not deal fairly with your Adversaries, in citing this Authority of the *Lords* and *Barons* Signing these Letters to the Pope, *Vice totius Communitatis Angliæ*; since I acknowledge in this Place, the Word *Communitas* being put alone, doth mean no more than the Community of the whole Kingdom. But in the Authority I have quoted, it is put after the *Earls* and *Barons*, and so then must mean the whole *Commonalty* or Body of the *Commons*, in the Sense they are now taken, and as it hath been always used in *French* as well as in *Latin*, when it comes after the *Earls* and *Barons* (as I have already noted.) And for this pray see the Stat. of *Westminster I.* made the 3^d of *Edward I.* but Eleven Years after the 49th of *Henry III.* *Per l' assentments des Archevesques, Evesques, Abbes, Priors, Counts, Barons & tout le Comminalty de la terre illoques summones.* Which Phrase I can shew you to have continued the same in most of our *French* Statutes, during the Reign of this King, and all his Successors in many Records, and Acts of *Parliament*, whilst they were writ in *Latin* or *French*; which I shall omit reciting, because I suppose you your self will allow it.

I have a great deal more to say concerning the true Sense of the Words *Communitas*, *le Commune*, & *le Commonalty*; which because it is long, and it now grows late, I shall defer till another Time. But I think I shall be able to shew you from undoubted Records, and Acts of *Parliament*, from the Reign of *Henry III.* as low as *Richard II.* that these Words, when used as I have now said, after the *Earls* and *Barons*, cannot refer to them, but to another distinct Estate or Order of Men, then called *les Communes*, or *les Communes*, in *English* the *Commons* of the Kingdom, distinct from the *Bishops* and *Lords*.

M. I shall not now dispute with you concerning the Sense you have put upon the Words you mention, but I grant they often signify the *Commons*, after the 18th of *Edward I.* in some Acts of *Parliament*, and *Parliamentary Records*; but I must beg your Pardon, if I cannot allow *Communitas* to signify the *Commons* at this Time in your Sense; and therefore am not yet convinced that the Words *la Communalty de la terre*, mentioned in the Statute of *Westminster I.* ought to be understood or englished by the Word *Commons*; who, I do not suppose were then above once called to *Parliament*, till the 18th of this King.

But as for what you argue from the Knights of Shires being often called *Mag- B. A. J. nates*, and *Grantz des Countees*, I allow they are often so stiled in our Statutes

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and Rolls of *Parliament*; but if you consider the Reason of it, this will do you little Service, since they were so called from their being at the beginning of their Election, chosen out of the Greatest and most considerable *Tenants in Capite*, under the Degree of Barons in each County, and no other; who were chosen to represent the *Omnes alios qui de Rege Teneant in Capite*, mentioned in King *John's* Charter; or them, and all the other *Military Tenants* by mean *Tenure*. For 'tis scarce to be believed, that those *Tenants in Capite*, who made such a Noise for their Liberties, would part with this main Point, of being personally present, or else the Body of them represented by some of their own Number in every County. And it may be upon this Account they had the Title of *Notable Knights*, &c. in the Ancient Writs of Summons, directed to the Sheriffs; though all the Tenants by Knights Service, as Suitors to the County Courts, were the Electors. And this was very likely the Reason of the *Statute* of the 7th of *Henry IV.* that the Election should be made in the County Court by all the *Suitors*; and also why the *Statute* of the 18th of *Henry VI.* by which any Man that had 40 s. *per Annum* of any *Tenure*, who was before permitted to be an Elector, was altered by the 10th of *Henry VI.* and so explained, that none but Freeholders of 40 s. *per Annum*, should afterwards be Electors, with respect to the least Part of a Knights Fee, *viz.* 40 s. *per Annum*, which were now come into the Hands of very ordinary Men. For anciently, soon after, or near the Conquest, there were very few, or no great *Soccagers*; that is, such as held great Estates in *Socage*; and neither the small ones, nor the *Nativi*, or Copyholders, were reputed *Liberi*, or *Legales Homines*, (as before-mentioned) or performed the Service proper to such Military Tenants, or those to whom they had alienated part of their Fees. But since I have tired you as well as my self, in wrangling about the Sense and Meaning of the Words in Dispute between us, I shall for the future take a shorter Cut, and give you Two or Three Authorities from our Ancient Laws of *William the Conqueror*, and *Henry II.* and *Richard I.* which together with King *John's Magna Charta*, will, I think, make it plain enough in Conscience, that the Commons, as now represented, were not summoned to *Parliament*, during the Reign of King *John*; and whether they were so summoned before the 49th of *Henry III.* (when they were called but once, till above Twenty Years after) will be the other Part of my Task.

I approve of your Method very well, and I assure you I love Pedantick Disputes about the Grammatical Signification of Words as little as your self, unless where it is absolutely necessary; as indeed you have rendred it so, by raising the greatest Part of your Arguments from the equivocal Use of those general Words, whereby our Ancient Laws and Historians have stiled the Constituent Members of our Great Councils; which if they are well cleared, I think it is high Time to fall upon some more solid Arguments. But before you come to that, I cannot forbear observing that you your self do allow, that in all Acts of *Parliament* and *Records*, after the 18th of *Edward I.* the Words *Communitas*, and *le Commune*, when put after the Earls and Barons, do signify the Commons in the same Sense in which they are now taken; but I must confess it seems incredible, (nay almost impossible to me) that these Words should signify the Community of the *Tenants in Capite*, in the 48th of *Henry III.* or 18th of *Edward I.* (begin where you please); and yet that the next *Parliament* after those, the same Words should be taken in quite another Sense, for the *Knights of Shires*, *Citizens* and *Burgesses*; and that no *Statute*, *Record*, or *Historian* of that, or succeeding Ages, should take the least Notice of it.

But before I conclude this Part of the Question, I cannot but rectify a great Mistake you have fallen into, by adhering to the Doctor with too implicit a Faith. For whereas you suppose, that the Reason why our *Knights of Shires* were called anciently *Grantz des Countees*, was because they were at first elected out of the *Tenants in Capite* only; and who with the other Tenants by *Military Service*, were also the only Electors of them at first, till the *Statute* of the 7th of *Henry IV.* ordained the Election should be made in the County Court by all the *Suitors*, as if it had not been many Ages so before. Whereas, if you please to peruse that *Statute* a little better, you will find it was not made to enlarge the Number of the Electors of *Parliament* Men; for long before that Time, all Sorts or Degrees of Freeholders, as well *Tenants in Capite*, as their Tenants by any kind of *Tenure*; or whether holding of such *Tenants in Capite*, or else of others, as Abbots and Priors,

and

and other *Mefne* Tenants, did alike owe Suit and Service to the County Court, and confequently were all alike capable of giving their Voices there, at the Election of Knights of Shires, however small their Estates were. Nor was that Statute of *Henry IV.* now cited (which requires the Election of Knights of Shires to be made by thofe that were summoned, and all other that were there prefent) made to confer any new Right upon fuch Freeholders, but only to prevent the Abufes of Sheriffs, who were wont before that Statute to procure Knights of Shires to be chofen clandestinely, without any due Summons, or Notice given to the Freeholders of the Election; much lefs doth the Statute of the 8th of *Henry VI.* confer any new Right or Privilege upon Freeholders of 40 s. *per Annum*, to give their Voices at fuch Election, (as you fuppose) but only takes away the Right which the fmall Freeholders of under 40 s. *per Annum* (whether *Tenants in Capite* or not) had before, and reftains it only to fuch as *shall have Lands or Tenements to the Value of 40 s. by Year above all Charges.* And it is yet a much greater Miftake to fuppose, as your Doct^r doth, that this Statute of the 8th of *Henry VI.* was at all altered by that of the 10th of this King, which is no more than an Explanation of it, *viz.* that by 40 s. *per Annum*, was meant 40 s. *Freehold*, and that of *Lands lying within the County where the Election should be made.* So that nothing can prove more exprefly, that all Freeholders, as well *Tenants in Capite*, as by any other *Tenure*, were all alike capable of Electing, and being Elected by the Ancient Law and Custom of *England*, long before thofe Statutes, and confequently were all alike Freeholders in the Eye of the Law.

But if you have nothing at prefent to object againft what I have now faid, pray purfue the Method you have undertaken, and let me fee thofe convincing Proofs you fo much rely upon, and which you hope may alfo ferve to convert me.

M. Before I undertake this Task, pray permit me to give you my Opinion, in answer to the Difficulty you have now propofed, which I confeffs feems to carry fome Weight with it; but thofe Prejudices will foon vanifh, when we confider that the firft Time this Alteration was praftifed, it was done in the King's Name, though by the abfolute Power of *Simon Mountfort*, in the 49th of *Henry III.* and after a Difcontinuance of above Twenty Years was again renewed by *Edward I.* at the Defire of the Earls and Barons, as I hope I fhall fhew you before we have finifhed our Converfation. And therefore it being firft done by the King's abfolute Power, and after with the general Confent of the Lords, there needed no Statute to introduce it, any more than there was in the Reign of *William the Conqueror*, to give the Bifhops and Abbots that held by Knight's Service, Places in *Parliament* among the *Temporal Lords*, and to bring their Lands which were held before in *Franc Almoigne*, under the Yoke of *Military Service.*

But to proceed in the Design I have undertaken; it is neceffary that I fhew you firft of all, who were thofe *Freemen*, or *Freeholders*, properly fo called, upon whom the whole Burden of the fubordinate Government of the Kingdom chiefly relied, and who then constituted the Legal Univerfity or Community thereof, immediately after the *Norman Conqueft*, and during many Kings Reigns after that Time.

I fuppose you are not ignorant, that King *William the Conqueror* having outed all, or at leaft the *English* Nobility and Gentry of their Estates, gave them away to his *French* and *Norman* Followers, to be held of him and his *Successors in Capite*, either by Knight's Service, or *Petit Serjeanty*; referving to himfelf the Ancient *Demesnes* of the Crown, and adding more thereunto for the Maintenance of the Royal Dignity; and for this I need refer you to no better Author than *Doomsday's* Book it felf. And then, after he had thus diftributed the Lands of *England*, as aforefaid, he compofed a Body of Laws ftill extant, and which are in great part Additions to the Ancient Laws of King *Edward*, and his Predeceffors. I fhall B. A. A. Page 254. give you Three or Four of thefe new Laws, and then I fhall leave you to judge, who were the true *Freemen*, or *Freeholders* of the whole Kingdom.

The Firft is the 52^d Law of this King, *Tit. De Fide, & obsequio erga Regem.* Lamb. Arch. Statuimus etiam ut omnes Liberi Homines, fadere & Sacramento affirmarent quod intra & extra Regnum Anglie, (quod olim vocabatur Regnum Britannia) Willielmo Regi Domino suo fideles esse volunt. Terras & Honores illius omni fidelitate servare cum eo, & contra inimicos & alienigenas defendere. Page 170, & dein.

Now whose these Freemen were, that were thus to maintain the King in his Lands and Honours, we shall see in the 55th Law following; *Tit. De Clientelari, seu Feudorum Jure, & Ingenuorum immunitate; Volumus etiam ac firmiter precipimus, & concedimus ut omnes Liberi Homines totius Monarchie Regni nostri prædicti habeant & teneant terras suas, & Possessiones suas, bene & in pace, libere ab omni Exactione injusta, & ab omni Tallagio, ita quod nihil ab eis exigatur, vel capiatur, nisi servitium suum liberum, quod de jure nobis facere debent, & facere tenentur; & prout Statutum est eis & illis, a nobis datum & concessum jure Hereditario imperpetuum per Commune Concilium totius Regni nostri;* whereby you may see, that all the Freemen here mentioned, who were to hold their Lands and Possessions in Peace, and free from all unjust Exaction and Taillage, were only such who were to perform Free Service, (*i. e.* Knight's Service) which was before appointed and granted them in Hereditary Right by the King in the Common Council of the Kingdom.

B. A. P.
Pag. 17.

So that none were properly Freemen, or exempt from Tax or Talliage, but such as held by Military Tenure, tho' not Knighted.

And pray also, by the way, take notice, that by this *Commune Consilium Regni* you are not to understand a Council of *English* Men, or of *English* and *French* together, but one wholly made up of *Frenchmen* or *Normans*, who as well Bishops and Abbots, as Temporal Earls and Barons, held almost all the Lands in the Kingdom by Knight's Service.

Which is also farther made out by the 58th Law; *Tit. de Clientum seu vassallorem præstationibus. Statuimus etiam & firmiter precipimus, ut omnes Comites, & Barones, & Milites, & Servientes, & Universi Liberi Homines totius Regni nostri prædicti habeant & teneant se semper bene in Armis, & in Equis ut decet, & oportet & quod sint semper prompti, & bene parati ad servitium suum integrum, nobis explendum & paragendum cum semper opus adfuerit secundum quod nobis debent, de Feodis & Tenementis suis de jure facere; & sicut illis statuimus, per Commune Consilium totius Regni nostri prædicti & illis dedimus, & concessimus in Feodo, jure Hereditario, hoc præceptum non sit violatum ullo modo super foris facturam nostram plenam:* So that here all the Freemen of his Kingdom were to perform their Military Services, with Horse and Arms according to their Fees and Tenures. Therefore they were Tenants in Military Service only (which in those Times were the only great Freemen, and that Service the only Free Service) which were meant in this Law; and how different they were from our ordinary Freeholders at this Day (for whom neither of these Laws were made) I dare leave it to the Judgment of every indifferent Person.

Ibid.

These then were the Men, the only legal Men that named and chose Juries, and served on Juries themselves, both in the Country and Hundred Courts, and dispatched all Country Business under the Great Officers, as will appear by the next Law with a little Explication by what follows: *Ut Jura Regia illasa servare pro viribus contentur subditi, Statuimus etiam & firmiter precipimus ut omnes Liberi Homines totius Regni prædicti sint Fratres conjurati, ad Monarchiam nostram & ad Regnum nostrum, pro viribus suis & facultatibus contra inimicos pro posse suo defendendum, & viriliter servandum, Pacem, & Dignitatem Coronæ nostræ, integram observandam, & ad Judicium rectum, & Justitiam constanter omnibus modis pro posse suo sine dolo, & sine dilatione faciendum.* Now the Judgment they were to give, and the Justice they were to do by this Law (besides that in their own Courts and Jurisdictions) was principally as they were Jurors or Recognitors upon Assize, &c. (tho' some of the greatest of their *Milites* were often *Sheriffs*, *Hundredaries*, and other under *Judges* and Ministerial Officers of Justice in their several Counties) as may be seen in *Glanville* every where, but especially *Lib. 2. c. 10, 11. lib. 9. c. 7. c. 17. & lib. 13.* throughout. This of being *Suitors* to the County and Hundred Courts, &c. being a *Service* incident to their Tenures; and before them many Times anciently in the County and Hundred Courts, and not privately in a Chamber, were executed Deeds, Grants and Donations of Lands, contained in very small Pieces of Parchment, witnessed by *Thomas* of such a Town, *John* of another, *Richard* of a third, &c. which were Knights, and *Liberi Tenentes* in Military Service in those Towns of considerable Estates, and not the lower Sort of People: And this Execution of Sales and Assurances in open Courts, was as publick and notorious, and as secure, as if at that time there had been a publick Register for them.

F. Before I answer your Conclusion from King *William's* Laws, I must tell you I am not at all satisfied neither with the Account you give, how the Commons of *England* could come in to be a Part of the Parliament, without any Noise or Notice taken of it, either by our Acts of Parliament, or Historians; since it is not only improbable, but also quite contrary to Matter of Fact, and History it self; as I shall, I hope, make good, when we come to treat of that Subject. Nor is your Argument of any weight, since it doth not follow, that because *William* the Conqueror so subjected the Lands of Bishops and Abbots to Tenure by Knight's Service; that therefore this was done by his sole Power, without any Law for it, made by the Common Council of the whole Kingdom. Since I observe in the first Law of King *William*, which you have now cited, that the very Services which (you say) were reserved upon the Lands he had bestowed, are said to be so appointed or settled, by the *Common Council* of the whole Kingdom; and therefore certainly the Services of the Bishops and Abbots must be so likewise; and therefore I must confess my self to be of Mr. *Selden's* Opinion in this Matter, who presumes there was a Law for it, tho' now lost; and cannot believe that this King (how powerful soever) should attempt to introduce so great a Yoke upon all the Bishops, and so many of the Abbots and Priors of *England*, without their Consents expressly given to a Law, and made in the Great Council concerning it, tho' that Law (as many others of this King) is not now to be found.

But to come to the main Design of your present Discourse, which is to shew that none but Tenants by Military Service *in Capite* were in the first Times after the Conquest, properly the only true *Freemen* or *Freeholders* of the whole Kingdom. I shall shew you first, that the Notion is quite new, and never heard of, till the Dr. (from whom you have borrowed it) first broach'd it; neither Mr. *Lambard*, Mr. *Somner*, nor Sir *Henry Spelman*, nor any of our *English* Antiquaries or Lawyers ever discovered any such Thing, before your Dr. arose to disperse these Clouds; every Man of the Kingdom, who was no Villain, being look'd upon as a Freeman, and every Owner of Lands of Inheritance, though of never so small a proportion, reckoned a Freeholder, and his Estate called his *Franc Tenement*, or Freehold, as well in our Ancient as Modern Laws; and that Freehold was not restrained only to Military Service, within a Hundred Years after the Conquest, appears by King *John's* *Magna Charta*; in which it is expressly recited, that *Nullus distringatur ad faciendum majus servitium de Feodo Militis, nec de alio Libero Tenemento quam inde debetur*; and that Soccage Tenants, tho' by Villain Services, were as much Freemen as your Tenants *in Capite*, see *Spelman's* Glossary, *Tit. Socman*, where he says thus; *Socmannus in natura brevium (brevi de Recto) propriè talis est, qui Liber est, & tenet de Rege, seu de alio Domino in antiquo dominico terras suas seu Tenementa in Villenagio. Libro Sancti Albani Tit. Houton, Chap. I. Rege Anglia manerium de Houton tenuerunt in dominico; omnes Tenentes Liberi, scil. & custumarii per sokam defendebant tenementa sua, &c. ex quo patet sokmans liberos homines significare.*

But since you seem to make a Distinction between Freemen and Freeholders, properly, or improperly so called; since King *William's* Laws you have now cited, do not warrant any such Distinction; I must beg your Excuse, if I am not of your Opinion; for the First Law you have quoted Warrants no such Thing; it only says, *That all Freemen in general, shall take an Oath of Fealty to the King, to maintain him, his Lands and Honours, against his Enemies and Strangers.*

Now it is apparent, that this Law extended to all Freemen (who were by the ancient *Saxon* Laws recited in the Addition to the Laws of King *Edward*) to take the very same Oath in the *Folkmore*, as they were after your Conquest to do according to this Law, either in the County Courts, or Sheriffs Tourne. Nor will the next Law do the Business any more than this; for the Words are, *That all Freemen of our said Kingdom may have and hold their Lands and Possessions free from all unjust Tailage Exactions, &c.* Which Word *Possessions* extends not only to Lands of Inheritance, (much less to Lands held by Knight's Service) but also to Estates for Life, and all other Chattels or Possessions, as well real as personal: Nor doth the Words *Servitium Liberum*, extend only to those Services which were reserved upon Lands held by Knight's Service *in Capite*, but also to those Common Services (called *Trinoda necessitas*) which I have formerly mentioned, viz. The building and repairing of Castles and Bridges, and Expedition against Foreign Enemies, which all the Lands in *England* were liable to, as well after, as before your Conquest: Nor will the 58th Law make more for you; for tho' it

only says that all Earls, Barons, Knights, and their Servitors or Esquires, and all Freemen of the Kingdom shall always be fitted with Horses and Arms as they ought to be, and which they ought to do according to, and by reason of their Fees and Tenures. Now it is plain, that this Law cannot extend to the less *Tenants in Capite* only, since they, according to your own Sense, are comprehended under the Word *Milites*, and their *Servientes*, which seems to mean their feudatory Tenants, are as much tyed by this Law to find Horses and Arms, as the *Tenants in Capite* themselves. So that whereas the Law says exprelly, *Universi Liberi Homines totius Regni*, it should have been to make good your Sense, *Universi Liberi Homines qui de Rege Tenant in Capite*; and as for the other Freemen who were of lesser Estates than to find Horses, they were to be ready with such Arms as befitted their Condition, as we see it explained by the Assize of Arms of *Henry II.*; so that this Law of *King William* is not to be taken in the Sense you put upon it, That all the true Freemen of the Kingdom were obliged to be ready with Horses and Arms, as if none were Freemen that did not; but referring the Words *Horses* and *Arms* to those who are to find both; and the Word *Arms* to those Freemen who were only obliged to keep Arms fit for Footmen, which Sense the Words will very well bear, tho' exprested generally and concisely according to the Mode of those Times, which abhor'd more Words than needs: And if these Laws will not prove what you bring them for, much less will the last you have cited: For if the Word *Omnes Liberi Homines totius Monarchie*, in the first Law, who were to take an Oath of Fidelity to the King, must extend to all the Freemen of *England*, (as certainly it did) all Freemen being alike obliged to be sworn in the Court Leet, and County Court; so must this too, the Title being, that *Omnes subditi*, all the Subjects should endeavour to maintain the King's Rights with all their Power; and tho' I grant that *Subditi* here are the same with *Liberi Homines* in the first Law; yet since by that Law all Freemen were to take the Oaths of Fidelity to the King, these must be also the very same Freemen who were to be sworn Brothers to defend the Kingdom, according to their Power and Estates. So that all that you have said to prove your Tenants by Knight's Service *in Capite*, to be the only Freemen that served on Juries, &c. being built upon a false Interpretation of these Laws of *King William*, are but the mere Fancies and Imaginations of the Author from whom you borrowed them. And you your self, (or rather the Dr. from whom you borrow these Notions,) have sufficiently confuted this Fancy of the *Tenants in Capite* being the only Freeholders in the Kingdom; for at the End of that last Speech, you are fain to fall a Peg lower, and gra it that all Military Tenants whatever, as well those *in Capite* as all others that held of them by the like Service, were included in this Law of your Conquerors, and consequently were capable of the like Privileges, either of serving in Parliament in Person, or else of being elected Knights of the Shire.

But taking the Words *Liberi Homines* in the largest Sense, and as they are in the *Magna Charta* of *King John*, and *Hen. III. Chap. 14.* where it is ordained, that *Liber Homo non amercietur pro parvo delicto, nisi secundum modum illius delicti, salvo sibi contentemento suo, & mercatar eodem modo, salva marchandiza, & villanus salvo Wangio*; Upon which Words *Sir Edward Coke* in his Second Inst. observes, that *Liber Homo* is here meant such a one as enjoys a *Franc Tenement*, that is, any Sort of Freehold.

But pray go on to prove by some plainer Authorities, that the *Archbishops* and *Abbots*, &c. together with the Earls, Barons, and other *Tenants in Capite*, were the only Council of the Kingdom for the assessing of Taxes, and making Laws in the Times immediately succeeding the Reign of *King William the First*.

M. I shall perform your Desires, and will begin with the great Council or Parliament held at *Clarendon*, of which *Matth. Paris* tells us, *Anno Dom. 1164. 10th of King Hen. II. In presentia Regis Henrici apud Clarendon 8 Calend. Feb. &c. de mandato ipsius Regis, presentibus etiam Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & Proceribus Regni, facta est Recognitio*; and which *Quadri-logus* and *Gervase of Canterbury*, comprise under the general Terms of *Presules, & Proceres Regni*; the Bishops and Great Men of the Kingdom.

What can be more clear by this Enumeration of the Constituent Parts of this full Parliament (as *Mr. Selden* and other Authors agree it to be) than that the Commons were then none of them, and that the *Clerus* and *Populus* in *Hoveden*, were only the *Clergy* and *Lay-Nobility*.

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X. Script. Coll.
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So likewise when these Constitutions were again renewed by this King at Northampton, the same Author tells us, (tho' by a Mistake it is written Nottingham) That *Rex Pater ibi celebravit Magnum Concilium de Statutis Regni, & coram Rege Filio suo, & coram Archiepiscopis, Episcopis, Comitibus & Baronibus Regni sui*; which Council is more particularly recited by *Benedictus Abbas* in his Manuscript History (now in the Cottonian Library) Anno 1176. (which was the 25th Hen. II.) *Circa Festam Conversionis Sancti Pauli, venit Dominus Rex usque Northampton & Magnum ibi celebravit Concilium de Statutis Regni sui coram Episcopis, & Comitibus, & Baronibus Terre sue; & coram eis per Concilium Regis Henrici Filii sui, & per Concilium Comitum, & Baronum & Militum, & Hominum suorum hanc subscriptam assisam fecit, &c.*

And *Kalph de Diceto*, Dean of St. Paul's, (A. D. 1210.) a diligent Searcher into the Histories and Transactions of his own and former Times, doth yet more fully declare the Meaning of *Abbot Benedict*, in the Account he gives of this Great Council, thus; *Rex juxta Consilium Filii sui Regis coram Episcopis, Comitibus, Baronibus Militibus & aliis Hominibus suis in hoc consentientibus, &c. Hoc autem factum est apud Northamptonam, 7mo Kal. Febr.* From all which Authorities we may collect, that this Council at Northampton, as well as that at Clarendon, was a Great or Common Council of the whole Kingdom; to which were summoned of the Laity, only the Earls and Barons of his, (*viz.* the King's) Land, to which is also added, for the better explaining who were understood under these Titles of *Baronum, Militum, & Hominum suorum*; that is, such *Tenants in Capite* as he pleased to summon, and were his Men or Military Tenants tho' not Knighted, and who held Lands either of the King, or his Son, to whom the King might assign divers of these Barons and Tenants *in Capite* to attune Tenants to him, and to maintain his Court and Kingship; and the King's *Comites*, and *Barones terre sue*, were the Earls and Barons of his Kingdom that held immediately of him, or were his immediate Tenants *in Capite*; and that *Homo suus & homines sui*, doth always signify the King's, or any other Lord's immediate Tenants by Knight's Service; for you may consult *Spelman's Glossary*, and *Du Fresne's Lexicon*, under these Titles.

But farther, to confirm who were then the Constituent Members of our Great Councils, pray see the Title to the Assize of Forests under King Richard I. which *Hoveden* recites in these Words; *Hac est Assiza Dom. Regis, & hac sunt precepta de Forestis suis in Anglia facta, per Assensum & Consilium Archiepiscoporum, & Abbatum Comum, & Baronum, & Militum totius Regni.* Where by *Militum* is to be understood not only those Tenants *in Capite* that were Knighted, but also all other Tenants *in Capite* tho' not actually so. And if the Word ever signifies any other Persons, they were not ordinary Freeholders, but *Liberè Tenentes in servitio Militari*, Freeholders by Military Service, as you may find in the Dr.'s Glossary, *Tit. Probi Comines, Milites, &c.* But pray remember also what Sir *H. Spelman* tells us in his Glossary, *Tit. Miles*, that these *Milites* (when put alone) were properly the *Liberi Tenentes*, or Tenants *in Capite*; *Qui non à Militari Cingulo, sed à Feodo nomen sumpserunt.* So I think that no ingenious Man but will confess that all these Councils were General Councils or Parliaments of the whole Kingdom, consisting of no other Persons than Tenants *in Capite*.

E. To return an Answer to all your Authorities together, I must now repeat what I often said, that there are no firm Arguments to be drawn from the doubtful Words, and general Expressions of our Ancient Historians; and I doubt not but to shew you, that all the whole Strength of your Reasons consists in this alone.

But since I have already spoken so much of the various Signification of the Word *Barones Regis & Regni*, I shall omit that, and now proceed to the rest of the Words, which you think make so plain for you; and shall only observe at present, that these Words *Barones* and *Milites*, are always stretch'd or contracted, according as the Gentlemen of your Opinion find it best to suit with their Hypothesis.

As for Example. If the Word *Barones* is put alone, then it must signify none but Great Barons, and Tenants *in Capite*; if it be joined with *Milites*, then by *Barones* must be only meant the Great Barons or Peers; and by *Milites*, those Tenants *in Capite* who were not Lords. If any other Words follow *Milites*, then this

Word must signify only such Tenants *in Capite* as were Knighted. So likewise you deal with all other Words, tho' of never so comprehensive a Signification.

But why may not I with as much Reason affirm, That by *Barones* mentioned in these Authorities, is to be understood the *Barones* properly so called; and by the *Milites* all Military Tenants, if not the Knights of Shires, whether they were Tenants *in Capite*, or Feudatories to others: For *Radulphus de Diceto in Anno 1040.* in the Laws of *Malcolm the Second, King of Scots*, mentions certain *Milites, Vavasores, qui tenent de Baronibus terras suas*; and that not only Tenants *in Capite*, but all others of whomsoever they held, who were able to maintain themselves like Knights, might be then forced to receive Knighthood, appears by two Writs of 24th and 26th *Henry III.* as they are found in the Close Rolls, under this Title, *Forma de Militibus faciendis*; and I desire you would read the Writ it self.

Rot. Claus.
24th H. III.
m. 8. dorso &
Rot. Claus.
26th H. III.
ps. 1. m. 6.
dorso.

Rex Vicecomiti Northampton, Salutem. Præcipimus tibi quod per totam Balliviam tuam in Singulis bonis Villis, & similiter in pleno Comitatu tuo clamari facias, quod omnes illi de Comitatu tuo qui tenent Feodum Militis integrum, vel etiam minus quam Feodum integrum, dum tamen de Tenemento Suo tam Militari quam Socagio possint sustentari, & Milites non sunt, Sicut Tenementa sua deligunt, citra festum omnium Sanctorum Anno Regni Nostri 25. Arma capiant & se Milites fieri faciant. Et si qui fuerint tales qui citra Terminum illum se Milites fieri non fecerint, Omnia Nomina eorum Statim à Termino illo, & quantitatem, & Valorem tenementorum suorum nobis scire facias Teste Rege, apud Lewes 25 die Julii.

Similiter Scribitur omnibus Vicecomitibus. From whence you may observe, that not only Tenants by Military Service, but also by Socage Tenure were then liable to Knighthood.

And as for, the Words *Homines Sui*, which you will have only to mean the King's Tenants *in Capite*, those Words have so equivocal a Signification, that there is no Argument to be drawn from them; for they may as well signify all the King's Subjects sworn to him by Fealty and Allegiance, as Tenants by Homage, or Knight's Service only, as Sir *H. Spelman* in his Glossary observes upon the Word *Homo*, *dicitur de quovis Prædiorum Tenente, sive Socmanno, sive Militari*: And for this he cites the Book of *Ramsay*; and if *Suus* be added to *Homo*, it doth much alter the Case, as appears by the Words following, in the same place, *Dicitur Præterea de Quovis Ministro, & Subdito, & sepe occurrit hoc modo in Antiquis Privilegiis, non Solum Vassalos, & Tenentes, sed Famulos, & Subditos quoslibet Significans*; and for this he gives us several Authorities.

So that you see these Words do not only signify Tenants *in Capite*, but also any other Subjects, and so might take in the Knights of Shires, with the Citizens and Burghesses likewise, at least the Representatives of such Cities and Burroughs as held of the King *in Capite*, by your own Sense of these Words.

But I shall however say something of the rest of the Words you insist upon, out of Abbot *Benedict*, viz. *Barones terræ suæ*, which means no more, than *Regni sui* before-mentioned, and then it will signify no more, than that all the Barons of his Kingdom were summon'd to this Assembly. For the Signification of which Word, I can give Mr. *Selden's* Authority for; who in his First Edition, 2d Part, hath this remarkable Passage, speaking of the several kinds of Barons, he says, "That besides the *Barones Regis*, there were Barons of Subjects holding, not of the King, but by Mesnalty, who made a third Rank of such as were Lords of Manors, &c. Out of this may be understood why, and in what Sense *Baronagium Angliæ, Rex & Baronagium suum, & sine Assensu Baronagii sui*, so often occur in our old Stories, taken as well for the King, and the whole State sometimes, as for the greater Nobility.

But if your Dr. had been pleased to have compared the Authors he quotes with others, nay, with the Title to the very Constitutions of *Clarendon* themselves, as he hath given them, as in his Appendix to his History out of *Quadriologus*, this Objection would have been needless; for if you consult *Gervase of Canterbury*, he styles the Parties to this Council *Præsules*, and *Proceres Anglicani Regni*. And as for *Matt. Paris*, pray observe that after the Word *Clerus* (which there coming immediately after the Bishops, Abbots, and Priors must needs signify the Inferior Clergy,) he expresses the Lay Orders thus; *Cum Comitibus Baronibus ac Proceribus cunctis*, where we may observe the Word *Proceres* here put distinct from *Barones*, which may very well signify not only the Less Tenants *in Capite*, but the Knights, Citizens and Burghesses, as I have already proved the Word *Proceres* does often signify,

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signify, both in our Historians and Records; but the *Quadrilegius* gives us the Title of these Constitutions more exactly in these Words, *Facta est ista Recognitio, coram Archiepiscopis, Episcopis, & Clero, & Comitibus, & Proceribus Regni*; and in the next Line he says, That those Customs were thus recognized, *per Archiepiscopos, Episcopos, Comites, Barones & per Nobiliores, & Antiquiores Regni*; where he likewise distinguishes between the Bishops and Inferior Clergy; and those who in the first place he calls *Proceres Regni*, in the next he calls *Nobiliores & Antiquiores Regni*, by which he might mean the Knights of Shires, Citizens and Burgeses, who were called in the *Saxon Times Seniores & Sapientes*, as I have already proved: Now if the Inferior Clergy appeared by their Representatives at this Council (since they could not then all come thither in Person any more than now;) to imagine that the Commons of *England* should not be likewise there by their Representatives of their own Order, is to deprive the Commons of that Right, which you cannot but allow to the Inferior Clergy.

To conclude; You your self confess, that your *Less Tenants in Capite*, sometimes called *Barones Minores*, were only nominally, and not properly *Barons* of the Kingdom, in the Sense that Word is now taken; and if so, pray give me any satisfactory Reason, why other Commoners as well as they, *viz.* the Knights of Shires, Citizens and Burgeses, might not then likewise have had Places in our Great Councils or Parliaments.

M. I see you use your utmost endeavour from the various and equivocal Sense of the Words in Question between us, to prove that the Commons in the Sense they are now taken, might be comprehended under the Words *Barones, Milites, & Homines sui*, which it is very certain could not be, according to the Constitution of the Government at that time. And therefore I shall give you a very plain Answer to your Question, why other Commoners as well as the lesser Tenants *in Capite* could not be present, or have places in those Great Councils, because it was contrary to the received Custom and Law of the Kingdom at that time, appears by those Clauses of King *John's* Charter, which Dr. B. hath made use of with so good success against Mr. P. and the Author of *Janus Anglorum*, &c. And therefore I desire you would read them along with me, as they stand here in the Appendix to the Dr.'s Compleat History of *England*; and as he hath transcribed them from an Ancient Manuscript in *Bennet College*, and divided them into so many distinct Articles or Chapters; but those we chiefly insist upon are these. Page 131.

Article 14. *Nullum Scutagium vel Auxilium ponam in Regno nostro nisi per Commune Consilium Regni nostri, nisi ad Corpus nostrum redimendum, & ad Primogenitum filium nostrum Militem faciendum, & ad Primogenitam filiam nostram semel Maritandam, & ad hoc non fiet nisi rationabile Auxilium.*

15. *Simili modo fiat de Auxiliis de Civitate Londinensi, & Civitas Londinensis, habeat omnes antiquas Libertates & Liberas Consuetudines suas, tam per terras quam per aquas.*

16. *Præterea Volumus, & concedimus quod omnes aliæ Civitates, & Burgi, & Villæ, & Barones de quinq; Portibus, & omnes Portus habeant omnes Libertates, & omnes Liberas consuetudines suas; & ad habendum Commune Concilium Regni de Auxiliis assidendis, aliter quam in tribus casibus prædictis.*

17. *Et de Scutagiis assidendis submoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites, & Majores Barones Regni singillatim per Literas nostras.*

18. *Et præterea faciemus submoneri in generali per Vice Comites, & Ballivos nostros omnes alios qui in Capite tenent de nobis, ad certum diem scilicet ad terminum quadraginta dierum ad minus, & ad certum locum, & in omnibus literis submonitionis causam submonitionis illius exponemus.*

19. *Et sic facta submonitione negotium procedat ad Diem assignatum secundum Consilium eorum qui presentes fuerint, quamvis non omnes submoniti venerint.*

From which Ancient Monument we may draw these Conclusions.

1. That the King exercised a Royal Prerogative before this Charter of Assessing Aids, and Scutages upon all sorts and degrees of Men, without the Assent of the Great or Common Council, (since called the Parliament) from doing which for the Future, the King by this Charter tied up his own Hand, unless in the Three Cases here particularly reserved.

2. That there is no mention of any other Members to be summoned to this Council, but the Archbishops, Bishops, Abbots, Earls, and Greater Barons by particular Writs, and all the other Lesser Tenants *in Capite* by one general Summons
by

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1. 211.

by the Sheriff. So that it is apparent, that the Great Councils before this time only consisted of such Earls, Great Barons and Tenants *in Capite*, as the King by special Writ was pleased to summon; and this new way brought in a greater Number of the Tenants *in Capite* than ever had appeared before; so that if it should be true, which you assert, that this Charter was no new Grant to the People of *England*, but a Confirmation of their Ancient Rights and Liberties, it must then necessarily follow, that *Great Lords* and *Tenants in Capite*, called sometimes *Barones Minores*, were then the only Representatives of the Commons.

A. P.

And that the Inferior Tenant's Consent was included in the Assent of his immediate Superior Lord, whose Presence was required in those Great Councils or Parliaments, need not, I think, be doubted; and I can give you, if need be, several Authorities to prove it. But pray observe further, that here is no mention at all in this Charter of any Citizens or Burghesses to be summoned to the Great Council, unless you will have them included under the general Title of *all others who hold in Capite*, and then none but such Cities and Towns who held *in Capite* could pretend to send any Members; much less is there any mention of any Knights to be chosen for Counties, which certainly would have been particularly provided for by this Charter, had they then had any place in this Assembly. So that I think it is very plain, that the Commons were not otherwise represented than by these Tenants *in Capite* for the rest of King *John's*, and most part of King *Henry III's* Reign, for ought I can yet discern: For though this Charter was confirmed in the Second and Ninth Year of that King last mentioned, *per Commune Consilium totius Regni*; yet there is likewise no mention made of any Knights and Citizens, or Burghesses.

F. Before I answer this main Argument of yours, (which I freely grant carrieth the greatest shew of probability of any you have yet brought) give me leave to take notice, that I think you are very much out in your first Conclusion, That before this Charter, the King exercised a Royal Prerogative of imposing Taxes without the Assent of Parliament; for if you mean that this Exaction was exercised *de facto*, and from thence you would make it a Prerogative of the Crown, I grant this was true, not only before, but after this Charter, before the Statute de Tallagio non concedendo was made; but if you mean *de Jure*, I affirm that our Kings were as much tied up by the 55th Law of *William the First*, (which you have already cited) from Levying any unjust Taxes, or Exactions, *sine Communi Consilio totius Regni*, as they could be afterwards by any other subsequent Law that could be made.

But I shall proceed to answer the Authority you have now brought from this Clause in King *John's* Charter to prove, That none but Tenants *in Capite* had any place in our great Councils, or Parliaments. But tho' I confess the Charters of *Henry III.* and Confirmations of *Edward I.* are the same with this in the most material Parts; yet there are several Clauses (of which this Clause in question is one) which are in King *John's* Charter, and yet are totally omitted out of both those of *Henry III.* as I shall shew you hereafter. So that let the Sense of this Place be what it will, I desire you to shew me any great Council of the Kingdom, that was ever summoned according to this Imaginary Model of yours; and that I do not speak without Book, that Parliament or Council of 9. *Henry III.* held but 11 Years after King *John's* Charter was confirmed; *Mut. Paris* (as I have already observed) tells us, it consisted of *Clerus, & Populus cum Magnatibus Regionis*.

But give me leave to read this Clause, according as your Dr. himself hath Printed and Transcribed it, and as your self have now read it; and I doubt not, but it will appear plain enough, that the Clause you insist on in this Charter, doth not at all concern the great general Council of the Kingdom; and for the proof of this, I desire you only to observe, that by the 15th and 16th Clauses of this Charter you have now read, both the *City of London*, and all other *Cities, Burroughs, and Towns*, had a Right to make a part of the common Council of the Kingdom for the Assessment of Aids, (otherwise than in the Three Cases there excepted.) For proof of this, pray take your Dr.'s Paraphrase to this Clause along with you in his Appendix to his compleat History of *England*, viz. That they, viz. the Citizens, Burghesses, and Cinque Ports shall send their Representatives or Commissioners to the Common Council of the Kingdom, for the Assessment of Aids: So that according to his Concession, there must have been Citizens and Burghesses in the great Council

L. S. 131. E.

Council, in the Reign of King *John*; and if so, I desire you to tell me whether those Gentlemen were Commoners or not?

But I will not insilt too much upon his Concessions: Since, perhaps he may say he did not make that Paraphrase upon *Magna Charta*, but that it was given him by a Friend; but I think it is very plain from the Words themselves, which point out a Distinction between the Common Council of the whole Kingdom, mentioned in the first Clause, which was to meet to Grant or Asses Aids or Subsidies; and that other Council or Assembly, consisting of all the Tenants *in Capite*, which by the 17th and 18th Clauses of that Charter, were to meet to assess *Escuage*, and to do such other Business as was express'd in their Summons. So that nothing seems plainer to me, than that this Assembly mentioned in this Charter, for assessing *Escuage*, was a distinct Council from the great Council of the Kingdom, which was appointed for the granting of other Taxes, called *Auxilia*, and for the making of Laws.

M. I confess this Gloss of yours seems at first sight very plausible, and agreeable enough to the way of Reading and Pointing with which the Dr. himself published this Charter; but for all that, I much doubt whether you are in the right, or not; therefore pray give me leave to put off this Debate till our next Meeting, since it now grows late; and in the mean while I will take time to consider the Arguments and Authorities you have now made use of.

F. Pray take your own time, but do not defer it above a day or two; for I have a great mind to have this Question dispatch'd off our hands: I am your Servant.

M. Good Night, Sir.

Add, in Page 284. l. 12. as follows.

But that the House of Commons were anciently often comprehended under the Title of *Grantz* (which is the same with *Magnates* in *Latin*) pray consult the Parliament Rolls of *Edward III.* where you will find the 4th of that King, this Passage; *Et est assentu, Et accorde per nostre Et Seigneur le Roy, Et tous les Grantz in pleyn Parliament*; (that is, in full Parliament, where both Lords and Commons were present,) that the Proceedings of the Lords against those that were no Peers should not be drawn into Example, &c. Now pray see the Commentaries of the most Learned and Reverend Author of the Grand Question, upon these Words in this Record; 'This hath all the Formality of an Act of Parliament, and therefore all the Estates were present: So likewise in the same Year, in the next Roll but one; *Accorde est per nostre Seigneur le Roy, Et son Counseil in Plein Parliament*; which was an Act of Parliament concerning those that had followed the Earl of *Lancaster*. So in the 5th of this King, we have the particular mention of the Bishops, as some of those who make a full Parliament; *Accorde est per nostre Seigneur le Roy, Prelates, Counts, Barons, Et autres Grands de Roialme in pleyn Parliament*. So in the 6th of *Edward III.* the Archbishop of *Canterbury* made his Oration in *pleyn Parliament*, which is thus explained, *en le presence nostre Seigneur le Roy, Et tous les Prelats, Et autres Grantz*. And in another Roll, *si est accorde Et assentu per tous in pleyn Parliament*; and who these were, we are told in the same Roll; *viz. les Prelats, Counts, Barons, Et tous les autres Summons à mesme Parliament*.

Now this is the clearest Explication of these Words in full Parliament, *viz.* in the presence of all those who were Summon'd; so that if the Commons were then Summon'd to this Parliament, (as certainly they were) they must have given their Assents under the Title of *Grantz*; since the Prelates, Earls, and Barons were particularly mentioned before.

N. 6.

P. 115.

N. 8.

N. 10.

N. 5.

N. 9.



Bibliotheca Politica.

D I A L O G U E VII.

Whether the *Commons* of *England*, represented by *Knights*, *Citizens*, and *Burgesses* in *Parliament*, were one of the *Three Estates* in *Parliament*, before the 49th of *Henry III.* or 18th of *Edw. I.*

P A R T II.

F. **Y**OU are welcome, Sir, but I did not expect to see you again so soon.

M. I beg your pardon if I come unseasonably ; but the truth is, I have so great a desire to conclude what we began upon, that important Subject we last discoursed of, that I could not be at ease till I had done my endeavour to give you Satisfaction therein, if it be possible.

But to come to the matter that we now meet about : I must now tell you again, that tho' I confess this Gloss of yours upon King *John's* Charter, seems plausible at first sight, nay, is agreeable to the Dr's own way of dividing and reading the several Articles of this Charter ; yet upon better Consideration, I can see no good reason for making a full, or at least a half stop in the 16th Article, after these Words, *omnes liberas consuetudines suas* ; adding the rest that follows, *& ad habendum Commune Concilium, &c.* to the following Clause, *& de scutagiis assidendis, &c.* much less for supposing as you do, without any ground, that there were two sorts of Common Councils, one for assessing Escuage, and the other for granting all other Aids and Taxes. And then, if read otherwise, it will plainly appear that it was one and the same Council of the Kingdom that did then both grant Aids to the Crown, and assess Escuage *ratione tenuræ* ; which I am the more inclined to believe from the Fourteenth Clause here cited, which says, That no Scutage or Aids shall be imposed, unless by the Common Council of the Kingdom. Now to what purpose is this so exprets'd, if there was to be one Council for the granting of Aids, and another for the assessing of Escuage : So that if this Common Council of the Tenants *in Capite* might grant Aids, and assess Escuage upon the Subjects (unless in the Case before excepted) I see no reason why they should not be the only Council, for the giving their Assent to Laws also ; and consequently of concluding not only their own Tenants, but the King's Tenants in *Petty Sergeanty* and *Soccage*, nay, the Tenants of any other Persons whatsoever.

And though I have seriously considered Mr. P's Appendix to the Rights of the Commons asserted, and Dr. B's Answer to it, as also his Animadversions upon *Jani Anglorum, &c.* Yet can I not see any colour of an Argument for making any distinction between the King's *Curia* of his great Lords and Tenants *in Capite*, and the Great or Common Council of the Kingdom ; but that they were then all one and

and the same. It would be tedious to me, as well as you, to run over all the particular Authorities and Examples which have been urged *Pro* and *Con* in this Question. But I desire you, or your Friend Mr. P. to shew me that there was any *Bishops, Earls, Barons*, or other Members of Parliament in the Times we now treat of, that had any Place, or Vote therein, but according to their Tenure, and the ancient Custom of all Feudal Tenants, who by the *German, Gothic, and Lombard* Feudal Laws (which in substance were the same with ours) were always summoned to the Court of the King their Supreme Lord.

But farther, to prove that this Council for Assessing Eſcuage, was no other than the great Council of Parliament of those Tenants *in Capite*, appears from *Littleton's Tenures*, where in his Second Book, Sect. 97. he tells us, *That after an Expedition Royal into Scotland, Eſcuage shall be Assessed in Parliament upon all those who failed to do their Service in that Expedition.* So that if the Parliament did then Assess Eſcuage, I desire to know why they might not do it in the Reign of King *John*, if this great Council of the Archbishops, Bishops, great Lords and Tenants *in Capite*, were the Common Council of the whole Kingdom in those Times? Yet that Eſcuage was not always Assessed in Parliament after this Charter of King *John*, but that the King by his own Prerogative did often grant his Tenants *in Capite* a Power to take Scutage of their Tenants without any Assent in Parliament, the Dr. hath given you above a dozen Examples in the Reigns of *Henry III.* and King *John*. B. A. P. Page 117.

Thus it was for Aids and Scutage Service; but if it was for Scutage imposed in Parliament as a Tax upon Land by the Common Council of the Nation, then the Tenants *in Capite* were not only the sole Grantors, but the Collectors of that Scutage too, from their Mesne Tenants: And the Writs to the Sheriff were different from those in Scutage Service, though the same in Substance; as likewise appears by those Records the Dr. hath there given us. Ib. p. 121.

E. I doubt not but I shall make good my Assertion, and shall be able to defend what Mr. P. hath in his Learned Treatise asserted concerning this matter. In the first place, I must stick to that way of reading and pointing of this Clause in dispute since it is not only agreeable to the Dr's Manuscript Copy, but also to the old *French* Copy, published by Father *D'Archy* in his *Spicilegium*, Vol. 13. which is written in the *French* of that Time: But to answer your Objection against this Interpretation, you your self have in great part helped me to do it, by that true Distinction you have now made between a Scutage as an Aid or Tax, and as a Service; the latter of which you assert might be granted to the King, to be raised by his Tenants *in Capite* upon their Under-Tenants; whereas the former was only grantable in Parliament by the Common Council of the whole Nation. Which Tax, I affirm, was always granted to the King, and imposed by the Common Council of the Kingdom only, and not by the Tenants *in Capite* alone, before the Expedition was undertaken. Whereas *Scutage Service* (considered as a Payment of so much Money) was never due or payable, till the Expedition was ended; and then only upon such as had failed to serve in Person, or by sufficient Deputies; and was then to be assessed by the Tenants *in Capite* alone.

And though I grant it may seem to have been a Prerogative as you call it, exercised by some of our Kings, sometimes to grant his Tenants *in Capite*, a License to take Scutage of their Tenants, without the Assent of the Great Council of the Kingdom; yet such Payments or Assessments were either according to Law, and the express Grant of this Charter it self; as is that Writ of King *John* to the Sheriff of *Glostershire*, for the Assessing of an Aid or Scutage Service of three Marks on each Scute upon the Tenants of *Siber*, Earl of *Winchesier*, for making his Eldest Son a Knight, and which the said Earl might have claimed of his Tenants by the Common Law, as also by the 20th Article of that Charter. But for a Scutage Tax *Littleton* tells us, Lib. 2. Sect. 101. *That because such Tenements came at first from the Lords, it is Reason they should have Eſcuage of their Tenants; and the Lords in such case might distrain for the Eſcuage so Assessed by Parliament; or in some Cases they may have the King's Writ directed to the Sheriffs of the same County, &c. to Levy such Eſcuages for them, as appears by the Register.* B. A. P. Page 117.

But if either King *John*, or King *Henry III.* granted Writs to levy Eſcuage upon the Under-Tenants of the great Lords, and Tenants *in Capite*, without their own Consent in Parliament, this ought to be no more cited as a Precedent, than any other illegal Acts committed by those Kings; since, as our Records and Histories

tell us, it was such illegal Proceedings which were the Cause of the Barons Wars. And it is expressly against the Words of this Charter of King *John*, which you have now quoted, *viz. nullum Scutagium vel Auxilium ponam in Regno nostro, nisi per Commune Consilium Regni nostri.*

So that notwithstanding all you have yet said, it doth not appear to me, how Scutage, when given as a Tax upon Knights Fees alone, and to be levied not only from the Tenants *in Capite* themselves, but their Under-Tenants; as also from the Tenants of them, who though they held *in Capite*, yet held not by Knights Service; such as were the Tenants in *Petty Serjeanty*, and those who held of the King in Chief as of several Honours, and not of his Crown as *in Capite*, could ever charge such Tenants without their Consents given either by themselves, or their lawful Representatives; much less could your Tenants *in Capite* Tax or Charge such as did not hold *in Capite* themselves, *viz.* those Abbots and Priors who held Lands in Right of their Monasteries in *Franc Almoigne*, and who, together with their Under-Tenants made about Two third Parts of all the Abby-Lands in *England*; or could Tax those, who not holding by Knights Service at all, but by Tenure in Soccage, or Fee Farm, did not hold their Lands as Knights Fees, and therefore could never be taxed by your Tenants *in Capite* for so many Knights Fees, or Parts thereof. And *Bracton* (who lived at this very Time) had distinguished to no purpose between those Common Services which all Tenants owe their Lords, and the general Taxes or Charges imposed by the Common Consent of the whole Kingdom. The Words are very remarkable, pray read them. *Sunt quedam Communes prestationes que servitia non dicuntur, nec de consuetudine veniunt nisi cum necessitas intervenierit, vel cum * Rex venerit, sicut sunt Hidagia, Corragia, Carvagia, & alia plura de necessitate & ex consensu Communi totius Regni introducta que ad Dominum feodi non pertinent.* And therefore I cannot see any Reason why the great Lords, and Tenants *in Capite*, should have ever Power to lay a general Tax upon the whole Kingdom, not the Tenth Part of which did then hold of them by Knights Service. So that nothing seems plainer to me, than that there was (as our Ancient Historians tell us) a distinct Court, which was held anciently three Times every Year, *viz.* at *Easter*, *Whitsuntide*, and *Christmas*; and then the King was attended by all the Bishops, great Lords, and other Tenants *in Capite*, and this was called *Curia*, or *Consilium Regis*; and if any Difference of Right did arise between the King and his Tenants, or between Tenant and Tenant, here it was to be heard and determined; and many other Things were there acted and done, in relation to the Kings Barons, or Tenants *in Capite* only.

But under Favour, this was not the *Commune Consilium totius Regni*, or Parliament (as we now call it;) for the King held this Court *ex More*, or by Custom, without any particular Summons, as *Simon of Durham*, and *Florence of Worcester*, and divers other Writers of the Lives of our first Norman Kings, do shew us. But when they take notice of the meeting of the *Commune Consilium totius Regni*, their Expressions alter, and then they say, that, *Rex ascevit*, as it is in *Ordericus Vitalis*, *Ex precepto Regis convenerunt*: or as *Eadmerus* — *Rex Sanctione sua adunavit.* And *Matt. Westm.* of latter Times takes notice of this Union, or Meeting of this *Curia*, or Assembly of Tenants *in Capite*, together with the Great Council or Parliament, in his History of *Hen. III.* Where relating how the King again confirmed the great Charter in a Parliament, *Anno Domini 1252.* being the 37th of his Reign, he hath these Words, *In quindena Pasche (adunato magno Parlamento, &c.)* So that it seems plain to me, that by this uniting of the great or whole Parliament, must be understood the Conjunction of both Councils together; and therefore, when this Council of Tenants *in Capite*, that thus met *ex More* took upon them to assess Escuage, and transact other Matters of Consequence, without the Consent of the major Part of the Tenants *in Capite*, who often failed to appear at these Courts, or Assemblies held *ex More*, it was then and not before, expressly provided by this Charter of King *John*, that Escuage should not be assessed for the future, without Summons, or Notice given of it to all the Tenants *in Capite*, who had Right to be there.

M. I see you would fain prove that there was a Council or Assembly of great Lords and Tenants *in Capite*, distinct from the Parliament, and which met *ex More*, and that these were the Persons, who were by this Charter to assemble for the assessing of Escuage; which is a meer precarious Hypothesis; nor can you, or those, from whom you borrow this Notion, make it out from any good Authority;

*Bract. lib. 2.
c. 16. p. 37.*

* *i. e.* When
the King
comes to Par-
liament.

*P. R. C.
Page 131.*

Reg. 68.

for I have already proved, that the *Barones Regis & Regni*, were the same Persons; and that usually the Barons or Tenants *in Capite* of what Quality soever, did repair to the King's Court at *Christmas*, *Easter*, and *Whitsunday*, doth appear to have been the Custom of those Times, from the Testimonies of our ancient Historians, and which you your self also alledge.

But to prove by Examples out of the Authors you have made use of, that the Bishops, great Barons, and Tenants *in Capite*, were then alone the great Council of the Kingdom, pray read *Eadmerus* speaking thus; *Celebratum est Concilium in Ecclesia Beati Petri in occidentali parte juxta Londinum sita, Communi Consensu Episcoporum, Abbatum, & Principum totius Regni, & hac Conventioni affuerant Primates Regni utriusque ordinis.* And at this Meeting were present, the *Prime Men* of the whole Kingdom of both Orders: In this Council the Bishops and Barons are called the Principal or Chief Men of the Kingdom; yet, these were all the King's Barons, they all held of him *in Capite*, as did all the Chief Men of the Kingdom. So likewise in another Meeting under this King *Hen. I.* when Archbishop *Anselm* was to give his Answer to the King, according to the Advice of the Bishops, and chief Men of the Kingdom, the same Author tells us of *Anselm*, that at *Easter*, *ad Curiam venit, Communis Concilii vocem accipit, &c.* Now pray tell me what Common Council this was, of the Bishops and Chief Men of the Kingdom, that *Anselm* referred himself to? Was it not *ex More*, by Custom? You cannot find in *Eadmer* any Summons to it, neither *Rex* *asciuit*, nor *praecepto Regis convenerunt*, nor *Rex sanctione sua adunavit*. In short, not to multiply Examples, look where you will in *Eadmerus*, or any other of the ancient Historians you have cited; and you will still find, that the Persons who met *ex More*, and without any Summons, were the same who assembled by the King's Summons at other Times, that is, the *Principes*, and *Episcopi Regni* or *Terrae*, called more generally, *Primates utriusque ordinis*, or the *Barones*, or *Majores Regni*, who did at these great Feasts *pro more*, go to Court, and there hold a solemn *Curia*, or great Council; and that these made up the *University*, or whole Body of the Kingdom; pray see what *Mat. Paris* says of such an Assembly. *In die Pentecostes Dominus Rex Anglorum Londini Festum tenens magnum, & serenissimum, tunc composita per Regni Universitatem Eleganti Epistola, &c.* This was about the Pope's Exactions, as hath been before delivered: And *Hen. III.* in his Letter to the Pope, calls the same Persons *Magnates Angliae*, which in his Letter to the Cardinals about the same Matter, he calls *Magnates Nostri*, as you may see in the former Citations of them.

F. But pray give me leave to ask you this Question; Might not our first *Norman* Kings often Summon the Common Council of the Kingdom at one of the said usual Feasts, since it was so much for the Conveniency of the Bishops, great Lords, and Tenants *in Capite*, (who I grant, were then all Members of the Great Council) to meet all the rest of the Kingdom, or Representatives of the Commons, at the same Time, though the Writers you have quoted may not mention their being summoned at all? And as for the Writs of Summons, those of much latter Parliaments being lost, how can it be expected we should now prove their being summoned so many Years before?

M. I confess it might be so, that upon extraordinary Business, and when the Occasion was great, and the King desired a greater and fuller Appearance, they might also receive an express Summons at those Times. But then I must desire you to shew me any mention of a Summons to any of these Common Councils, which when called at other Times, are most constantly mentioned in this Author. And I desire to know of you, what you will say to those Words *pro more convenit*, which is spoken of the most general Councils, when the Community of the Kingdom met at the King's Court? You cannot deny, but that the Tenants *in Capite*, were the King's *Barones*, *Milites*, *Magnates*, &c. Upon this we will join Issue; and I affirm (without bringing Proofs which are infinite in this Case) that all the Bishops, Earls, and Barons of *England*, did hold their Lands, Earldoms, and Baronies of the Crown, or (which is all one) of the King, as of his Person, and that was *in Capite*.

William the Conqueror, as I said before, divided most of the Lands in *England* amongst his great Followers, to hold of him; he made Earls and Barons, such as he pleased: They and their Descendants held upon the same Terms with the first Grantors, which was, to find so many Horse and Arm, and do such and such Services;

vices; both Titles and Lands were Forfeitable for Treason or Felony to the King, did Homage for them; and every Bishop, Earl and Baron of *England*, was in those Circumstances, and held of the King after this manner.

Other Lands were given to other Persons for meaner Services; as to his *Woodwards, Foresters, Huntsmen, Falconers, Cooks, Chamberlains, Goldsmiths, Bayliffs of Mannors* in his own Hands, and many other Officers, which in *Doomsday-Book*, are called, *Terræ Thanorum Regis*, and sometimes *Servientium Regis*; And I doubt not, whatever the Notion of *Petyt Serjeanty* now is, but that originally, this holding of Lands was the true Tenure; not but presenting the Lord with a Bow and Arrow, a pair of Spurs every Year, &c. might also be called *Petyt Serjeanty*, though not so properly as the other.

F. Not to multiply Words to no purpose, I think your Reply is far from being satisfactory; for in the first place, it is very unreasonable to demand that we should now shew the express Summons to these Common Councils which were not held *de more*; since you know that all ancient Records of that kind are destroy'd and lost; for if we could produce them at this Day, the difference between us and those of your Opinion, would quickly be at an end; as appears by those great Councils, which are said expressly, by the Historians I have cited, to have been summoned, and yet no such Writs of Summons are to be found; nor is it any good Argument, that because our ancient Historians mention no distinct Summons to the great Councils, when met at the usual Times of the meeting of the Tenants *in Capite*, that therefore there were none such, since we find they often pass by much more material Matters than this.

And though I grant that the Tenants *in Capite* were then part of the great Council of the *Barones, Milites, & Magnates Regni*; yet does it not follow for all this, that none but the King's Barons, and Tenants *in Capite*, were Members of the great Council of the Kingdom; since there might be in those Times other considerable Freeholders, who (though they held their Lands of the Tenants *in Capite*, yet) might be there as Knights of Shires, or else appear in Person at those Assemblies as well as the other; and besides, there were others, who, though they did not hold of the King *in Capite*, but of some great Honour or Castle, or else of some Abbot or Prior; yet were Men of very great Estates, and very numerous; all which must otherwise have had their Lands tax'd, and Laws made for them, without the Consent of themselves, or any to represent them. Nor is your Assertion at all true, That *William the Conqueror* divided most of the Lands in *England* to be held of him *in Capite*. For besides those Servants and Officers you last mentioned, near Two thirds of the Lands of the Abbies and Priories in *England* were not held, as also much other Lands in *Kent*, and other Countries, *per Baroniam*, or Knights Service, but in *libera Eleemosina* only, or Soccage, as I have already prov'd; and consequently neither they nor their Tenants could, according to your Hypothesis, have any Representatives in Parliament.

And farther, you your self grant, that those Lands you mention, which were given out by your Conqueror, to his *Woodwards, Foresters, &c.* did not capacitate them to appear in Parliament, since their Tenure was only by *Petit Serjeanty*, and not by Knights Service: Nor could they become the King's Tenants in ancient Demesne, because such Tenants held wholly by Soccage Tenure; whereas it appears plainly by *Littleton*, that Tenants in *Petit Serjeanty* were subject to Wardship, Marriage, and Relief. So that whoever will but consider, that near half the Lands in *England* were held by Bishops, Abbots, Priors, &c. and of whom not a Third Part held by Knights Service of the Crown; and will then likewise consider what a vast number of Tenants those Abbots, Priors, Deans and Chapters (who were not Tenants *in Capite* at all) must have had; and who either held Estates in Fee, or else for Life under them in Soccage, as well as by Knights Service; as also all the other sorts of Tenures I have already mentioned, which either held of the King as of some Honour or Castle, or else of other Mesne Lords by other Tenures than Knight's Service; must certainly conclude, that not above one half of the Lands of the whole Kingdom was held either immediately of the King, or else of other Mesne Lords by that Tenure. So that if all these Persons, which were far the greater Number of the Free-holders in *England*, should have been thus excluded from having any thing to do in our great Councils; I doubt not but we should have found sufficient Clamour in our Histories against so unjust a Constitution; and when the whole

whole Body of the Kingdom was in Arms against King *John* at *Running-Mead*, they would likewise have inserted a Clause for themselves, if they had not had their Suffrages there before, either by themselves in their own Persons, or by their lawful Representatives. And therefore upon the whole Matter, I durst leave it to the Consideration of any unprejudiced Man, whether it is not much more probable, that the Constitution of Knights of Shires, Citizens and Burgeßes, appearing in Parliament, should be much more ancient than the Time you assign; than that so small a Body of Men as the Bishops, Lords, and Tenants *in Capite*, should represent all the rest of the Freeholders and People of *England*, who never held of them by Knights Service at all. Nor have you yet answered the Quotation I have brought out of *Bracton* in my last Discourse to the contrary. And whoever will but consult that Author in his Chapter of Tenures, will find, that the Tenants *in Capite* were so far from having a Power of charging all the Mesne Tenants at their Pleasure, that in his Chapter *de Tenuris*, it appears, that a Mesne Tenant *in Capite* having purchased an Estate for a valuable Consideration, was liable to no other Services and Conditions. than what his Tenure express'd; which once performed, the Lord had no more to say to him: And if so be he laid any further Burthens upon him, he might have had a Writ of Acquittal out of the King's Court against him directed to the Sheriffs; several Forms of which you may see in *Glanville*, and in the old Regifter.

Al. We are not to rest upon meer Probabilities; for some things that now appear to us unreasonable at this Time, might then be very just. For if the Feudatary Tenants of the Bishops, Barons, and other Tenants *in Capite*, were well enough contented with the Constitution of the Kingdom as it then was; and that it plainly appears by matter of Fact, that there was but one Common Council for the whole Kingdom; and that, of the Bishops, Abbots, Great Lords and Less Tenants *in Capite* only, it is in vain to argue of any Unreasonableness in, or Inconveniencies that might arise from such a Constitution, though perhaps a great part of the Kingdom did not hold *in Capite*, nor yet by Knights Service; and therefore though the Feudatary Tenants of the Tenants *in Capite*, were upon the Performance of their Services acquitted of all other Charges; yet this was still to be understood only of such ordinary Services as those Tenants were to perform by virtue of their Tenures, such as was Scutage Service, or the attending upon their Lords when they went out to War along with the King; but did not extend to such Scutages as were granted in Parliament, or as a Tax upon Land by the common Consent of the Nation; for then the Tenants *in Capite* were not only the Grantors, but the Collectors too, of such Scutage Tax, from their Military Tenants; and the Writs to the Sheriffs were different from those for Scutage Service. And for proof of this, I desire you would peruse that Writ which the Doctor quotes of the 19th of *Henry III.* which is still to be seen in the Close Roll of that Year. *Rex Vice Comiti Suffex salutem. Scias quod Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, & omnes alii de Regno nostro Anglie qui de nobis tenent in Capite, spontanea voluntate sua, & sine Consuetudine, concesserunt nobis Efficax Auxilium ad magna Negotia nostra Expediendā, unde provisum est de Consilio illorum, quod habeamus de feodis Militum & Wardis, quæ de nobis Tenent in Capite duas Marcas ad predictum Auxilium faciendum, & unde providerint reddere nobis unam medietatem ante Festum sancti Michaelis, Anno Regni 19. & aliam Medietatem ad Pasche, Anno Regni nostri 20. Ideo tibi precipimus quod ad Mandatum venerabilis Patris R. Ciceſtren. Episcopi Cancellarii nostri, sine dilatione Distringas omnes Milites & liberos Tenentes, qui de eo Tenent per Servicium Militare in Balliva tua, ad reddendum ei de singulis feodis militum, & Wardis duas Marcas, ad predictum Auxilium nobis per manum suam Reddendum in Terminis predictis.*

Cl. 19. H. 3.
m. 8. dorſe.

* This Mandate was not given him as Chancellor, but as a Tenant *in Capite*.

Sic scribitur pro aliis Episcopis, Abbatibus, Prioribus & Magnatibus.

Now I desire you to tell me whether any thing can be more plain, than that this Tax was granted by a Common Council of the Kingdom, according to that Clause of King *John's* Charter I have now cited: Wherein it is first especially provided, that no Aid or Scutage shall be imposed upon the Kingdom, unless by the Common Council thereof; and yet you see by this Writ, that the Archbishops, &c. with the Barons there mentioned, together with the other Tenants *in Capite* alone, granted an Aid or Scutage Tax of two Mark for every Knights Fee which they held of the King; and that by virtue there

of not only those Knights Fees they held in their Hands, but also all those Subfeudatary Tenants called here Freeholders, who held of them by Knight's Service, were likewise charged for every Knight's Fee so held, the like Sum of two Marks. Now I think nothing can be more plain from this Record, than that this was a Common Council of the whole Kingdom, and yet consisted of Tenants *in Capite* only; and therefore I desire you to shew me some better Proofs than you yet have done, that these Tenants *in Capite* ever made a distinct Council, different from the Common Council of the whole Kingdom.

F. I grant this seems at first sight to be a good Authority for you; but I doubt not for all that, to prove, that it makes wholly against you; and will, together with those other Proofs I shall urge, make out this difference between the two sorts of Councils, I have already asserted; and therefore I must tell you, that there is no necessity of understanding the Words *de Consilio illorum* (mentioned in this Record) to refer to the Common Council of the whole Kingdom, it not being here said to be granted *per Commune Concilium totius Regni*; and then there can no more be proved from this Record, than that a Common Council of the Tenants *in Capite*, took upon themselves an unusual Power, *sine consuetudine*, as the Writ here mentions, in those Times, to charge not only themselves, but their Under-Tenants also: And that even this was an Encroachment, appears by the Statute, *De tallagio non concedendo*, made 25th of Edward I. whereby it is expressly forbid that any Talliage or Subsidy should be laid upon the Kingdom *sine voluntate & assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, Militum, Burgensium, & aliorum liberorum hominum de Regno nostro*. Now pray read my Lord Cook's Reason in his 2d Instit. why this Statute was made, 'The 2d Cause (says he) was, That the King the Year before, had taken a Talliage of all Cities and Boroughs, without Assent of Parliament, whereupon arose a great Murmuring and Discontent among the Commons: For pacifying which Discord between the King and his Nobles, and for the quieting of the Commons, and for a perpetual and constant Law for ever after, both in this and other-like Cases, this Act was made, &c. being no other (as the same Author tells us in the Conclusion of his Comment on this Statute,) than a Restitution General to the Subjects, of all their Laws, Liberties, and free Customs, as freely and wholly as at any time before, in better and fuller manner than they used to have the same. But yet, that this was no general Scutage or Tax upon the whole Kingdom, but upon the Tenants *in Capite*, and their Tenants by Knight's Service alone, appears by the Writ it self. So that not only all the Persons I have already mentioned, who being Tenants to Monasteries and Priories, did not hold by Knight's Service, and all Tenants in *Petyt Sergeanty*, and all Cities and Boroughs, who did not hold *in Capite* (who if they had not then Representatives in the great Council, were wholly Free from this Tax,) and not only these, but all Tenants in Fee Soccage, whether holding of the King, or of other Mesne Lords, were wholly exempt from this Scutage. So that nothing seems plainer to me, than that this Assembly that gave the King this Tax for themselves and their Tenants, was a Common Council only of Tenants *in Capite*, charging themselves and their Tenants only, and not the whole Kingdom; and that done in a Case of great necessity, *sine consuetudine*: For if it had included all the rest of the Kingdom, there would certainly have been some mention made, how all the rest of the Kingdom (which did not hold by Knight's Service) should be Taxed.

And that this was a Council consisting of the Tenants *in Capite* only, may appear by a Record of the 42d. of this King; which I pray read. *Rex Bar. &c. Quia per Commune Concilium Comitum, Baronum, & aliorum Magnatum nobiscum in Wallia nuper existentium, provisum est; Quod nos, & ipsi qui servitium nobis fecerunt, ibidem habeamus Scutagium nostrum, viz. De Scuto 40 Sol. pro Exercitu nostro Wall. Anno Regni 41. Vobis mandamus, quod de omnibus feodis Militum que tenentur de Nobis in Capite, vel de Wardis in manu nostra existentibus, (exceptis Feod. illorum qui brevia nostra habuerunt de Scutag. suo habendo) levare fac. Scutag. nostrum.* From which Writ it appears, that this was only a Common Council of Tenants *in Capite*, who had attended on the King, and done their Service in this

Inter Commu-
ria de Term.
Sanli. Mico.
Anno 42. H. 2.
Rot. 4. de Scut.
levand.

Welsh Expedition; and concern'd none else but such Tenants by Knights Service, and their Tenants who had fail'd to do their Service; and is such a Tax as is expressly reserved by the last Clause of King John's Charter, which is before cited; where-by Scutage is to be assessed by all the Tenants *in Capite*.

And that not only the Spiritual and Temporal Barons, and Tenants *in Capite* did thus meet, and hold distinct Councils or Assemblies for the granting of Scutage; but also that the Spiritual Barons, and other Ecclesiastical Tenants *in Capite*, did also sometimes hold separate Assemblies, appears by the Patent-Roll of the 15th of this King, thus: *Cum peteremus à Prelatis Angliæ quod nobis Auxilium facerent, pro magnâ necessitate nostrâ de quâ eis constabat; viz. Episcopis, Abbatibus, Abbatissis, Prioribus & Priorissis, qui de Nobis tenent in Capite, ipsi Nobis liberaliter concesserunt Auxilium tale; viz. De singulis Feodis Militum suorum 40 s. de rot Feodis, de quot ipsi tenentur nobis respondere, quando nobis faciunt Servitium Militare.* Where you see, not only the Bishops and Abbots, but the Abbesses and Prioreesses granted a Scutage of 40 s. upon every Knight's Fee, for which they were answerable to the King. And tho' I do not suppose that these Women left their Nunneries, and appear'd in Person at such Meetings; yet they might very well do it by their *Oeconomi*, or Stewards, as their Lawful Proxies for Assemblies of that Nature.

But when a General Tax or Aid was granted by the whole Kingdom, the Stile of these Councils runs much otherwise; as appears by the Close-Roll of the 4th of this King, where it is recited in the Record, that *Omnes Magnates & Fideles totius Regni nostri*, granted *de qualibet carucatâ duos solidos*. Now it hence appears, that this was a Grant of Caruage; which not being a Scutage-Service, nor yet a Scutage-Tax, was therefore to be granted by the Common Council of the whole Kingdom, assessed not only upon Tenants *in Capite*, and their Feudatory Tenants, but upon each Plough-Land of the whole Kingdom, must have been granted (as I have already proved out of *Bracton*, speaking of this Caruage) *de Consensu & communi Consilio totius Regni*; for otherwise these Tenants *in Capite* could never have charged all the other Lands of *England* which were not held by Military Tenure. And to make it yet plainer by other Records, pray see another of the 16th of this King, in these Words: *Rex Vicecomiti Devon. Salutem. Sciatis quod Archiepiscopi, Episcopi, Abbates, Priores, & Clerici terras habentes, quæ ad Ecclesias suas non pertinent, Comites, Barones, Milites, Liberi Homines, & Villani de Regno nostro, concesserunt nobis in auxilium, quadragesimam partem omnium Mobilium suorum.* So that it is plain here who made the *Commune Concilium Regni*, and gave this Aid of a 40th Part of their Goods; viz. the Archbishops, Bishops, Abbots, Priors, Inferior Landed Clergymen, the Earls, Barons, Knights, Freemen, &c. which was a Subsidy granted upon Goods, or Personal Estates, and not laid upon Land, and could not be granted by the Tenants *in Capite* alone. And that it may fully express all the Parties to the Grant, the Record tells us, there were also the *Villani*, the Inhabitants of the Villages or Borough-Towns. And to let you see that our Ancient Manuscript Chronicles of this Age give the same Sense to the Expressions of this Record, and that in the same Terms; pray read this Quotation, which a Friend of mine took out of an Ancient Manuscript, called *Chronica Monasterij de Hageny*, in the *Cottonian Library*, as ancient as the Times are we are now treating on. The Words are these: *Anno 17. Henrici Regis Quarti*: (Where note that the Year is mistaken for the 16th, but the King is the same; Henry the Third being often in that Age called the Fourth, in respect to King Henry, Son to Henry the Second) *Idem Rex accepit ab Archiepiscop. Episcop. Abbatibus, Prioribus, Clericis terras habentibus, quæ ad Eccles. sua non pertinent, & ab Comitibus, Baronibus, Militibus, Liberis Hominibus, & Villanis de Regno Angliæ, in Auxilium quadragesimam partem omnium Mobilium suorum.* And to let you see that this Author makes a plain Distinction between the Tenants *in Capite*, and the rest of the Kingdom, pray observe what immediately follows in the same place; [*ut*] (*Anno ejus octavo*) *tu quo communi Assensu, & voluntate Magnatum suorum, quam aliorum Laicorum totius Regni, quintam decimam Catalogorum suorum universaliter accepit.* Where note, by *accepit*, is still to be understood he received it, after the Peoples Grant of it, as before in the Record of the 16th; and that by *Magnatum suorum*, is meant the Great Lords and Tenants *in Capite*; and by *aliorum Laicorum*, (put here as distinct from them) all other Orders or Degrees of Men.

Now pray, how could these Taxes upon the Goods of the whole Kingdom have ever been given, but by the General Representatives thereof, (since all could not be there in Person) unless you can shew me, that Men in those Days held their very Goods and Chatels by Tenure *in Capite*.

Al. I think you and I may so far agree, that this Council I instanced in, consisted of Tenants *in Capite* only; and likewise that they imposed Scutage upon no others than their Tenants by Knight-Service; yet doth it not therefore follow, that they were not the Common Council of the whole Kingdom, or might not have Tax'd all others, tho' they were not their immediate Tenants, as well as they did those that were: And therefore I am not convinc'd, but that these Persons mentioned in the Records you have cited, (which you grant constituted a Common Council of the Kingdom) were no other than the same Tenants *in Capite* already mentioned: For as for the *Fideles*, mentioned in the Record of the 4th of Henry the III. I think the Doctor hath very well proved, both in his Answer to Mr. P. as also in his Glossary, that they were no other than the King's Tenants *in Capite*: And for this, pray consider the Authorities he there gives us. For tho' I agree with you, that the Word *Fideles* doth sometimes signify (generally) all those who are under the Power or Subjection of their Prince; yet Hotoman also tells us, That, *Fideles interdum specialiter dicuntur iidem qui Vassali: Qui Feudo accepto in Patroni Fide, & Clientela sunt, vicissimque suam ei certi obsequij nomine Fidem astrinxerunt.* And in this Sense, I suppose, this Word is to be taken in most of our Histories and Records. I shall therefore give you one, which will sufficiently clear the true Signification not only of the Word *Fideles*, but of *Liberi Homines* too.

P. G. p. 45.
Hotoman in
verbis Fud.
Ch. 924. D.

Speaking of
Prince William
Son to Henry
the Ist. f. 50.
A. N. 30.

Pat. 15. John.
P. 2. M. 2.
N. 9.

P. G. 45.
B. A. P. p. 67,
68.

It is in William Malmsbury, in these Words: *Willielmo Filio suo, cum vix 12. Annorum esset, omnes Liberi Homines, &c. cujuscunque Ordinis & Dignitatis, cujuscunque Domini Fideles, Manibus & Sacramento se dedere coacti sunt.* By which you may see, that by the Words *Liberi Homines & Fideles*, are here meant only the Feudal, or Military Tenants, either of the King, or of any other Lord. And to prove it farther by Records, pray see here those that the Doctor hath given us in the same place. The first is that of the Patent-Rolls of the 15th of King John: *Rex Baronibus, Militibus, & omnibus Fidelibus totius Anglie, Salutem.* They were to hear what the Bishop of Winchester was to say to them about the Releasing the Interdict; and that these *Milites* and *Fideles* were only the King's Tenants *in Capite*, is clear from the latter Part of this Record: *Unicuique vestrum, si fieri potest, Literas nostras super hoc transmissimus, sed Negotium majori Festinatione, &c. Teste Meipso apud Rupel, &c.*

B. G. p. 45.
Ch. 42. H. 3.
M. 10. dor. o.

The King had writ to them all particularly, but that the Business required greater Haste. It seems, before the Granting of *Magna Charta*, this King sent special Summons, and particular Letters to his Barons, and other Tenants *in Capite*, to meet upon any Occasion. So likewise in these Writs there mentioned to the Tenants *in Capite* of several Counties, as they are found in the Close-Roll there cited: *Rex omnibus Comitibus, Baronibus, Militibus, & aliis fidelibus suis de Com. Ebor. Northumbr. Cambr. &c. Vobis mandamus quod Prompti sitis, & Parati cum Equis & Armis, &c.* These were the Feudataries and Tenants in Military Service.

B. A. P. p. 220,
221.

But to speak somewhat of the *Clerici Terras habentes, &c.* as also of the *Liberi Homines & Villani*, mentioned in the Records of 16. Henry III. you have now cited: 1. I cannot allow your Version of those Words *Clerici Terras habentes, que ad Ecclesias suas non pertinent*, by inferior Landed Clergy-men, since 'tis more than you can make out; for I take them to be such Clerks, as had Mannors and Military Fees not belonging to their Benefices, and that were held of the King *in Capite*, the Fee whereof was in the Crown, and not in the Church, and therefore did not belong to it.

But *Mat. Paris, fol. 377*, informs us better who they were that gave this Tax, when he speaks concerning this very Council you mention: - - - *Ad Colloquium ceram Rege convenerunt Episcopi, & aliarum Ecclesiarum Prelati, cum Preeribus Regni, concessa est Regi quadregesima pars beneficiorum.*

Now what the *Liberi Homines* were in this Record you have cited, we may easily guess from the other Records I have made use of, in the 15th of Henry III. viz. such of those, *Omnes alij qui de Nobis tenent in Capite*: which were not *Milites* in a strict Sense, as not having received the Order of Knighthood. And

I shall

I shall make out this Sense of the Words, as also of the true Meaning of these Villani, by another Record, dated but Two Years after this of yours, viz. 21 Hen. III. Rex Vic. Cant. Salut. Scias, cum octavis Sancti Hillarii, &c. ad mandatum nostrum convenirent apud Westm. Archiepiscopi, Episcopi, Abbates, Priores, Comites & Barones totius Regni nostri ut tractatum haberent nobiscum de statu nostro, & Regni nostri, iidem Archiepiscopi, Episcopi, Abbates, Priores & Clerici Terras habentes, que ad Ecclesias non pertinent, Comites, Barones, Milites & Liberi Homines pro se & suis Villanis nobis concesserunt in Auxilium Tricesimam partem bonorum. Rot. Pat. m. 7. dnf.

From this Record we may observe, 1. That the King's Writ was only issued to the Archbishops, Bishops, &c. Earls, Barons of the whole Kingdom. 2. That in the Recital of this Tax, the Sheriff is told, first, That the Archbishops, Bishops, &c. and the Clergy which had Land not belonging to their Churches (a certain Sign that they granted by themselves, and out of nothing else but that) and then that the Earls, Barons, Knights and Freemen for themselves and their Villains granted a Thirtieth Part of their Moveables. B. A. 7. P. 221.

And from this Record it is also manifest, these Liberi Homines had Villanos (if not Bondmen) Villagers or Rusticks, Colonos, or Husbandmen at least; of whose Estates by publick Assent, and for the publick Benefit, they might in part dispose; which Liberi Homines, according to the Tenor of all our Records and Histories, were Tenants in Capite; and that the Villani mentioned in the other Record of 16 Hen. III. to have given a Fortieth Part of their Moveables, did grant by their Lords; that is, their Lords Paramount, that were Tenants in Capite, did grant for them, tho' they held it not immediately of them, but of other Tenants in Military Service, which immediately held of the Tenants in Capite who did charge them by publick Taxes, hath been shewn from divers Records: So that it was frequent in those Times to say, Such, and such, concesserunt, granted such a Tax, that is, by those who had Power and Authority to do it for them; and without their Consent too, when those for whom they granted were not capable of being Members of Parliament themselves. I could give you more Examples of the like Nature, but I will not tire you.

F. I pray, Sir, give me leave to answer this long Speech, and to begin with your Interpretation of this Word Fideles. First then, we are so far agreed, that the Word Fideles had two or three different Significations. First, it signified all the Subjects in general; in the next place, all Vassals, or Feudatory Tenants whatever, whether of the King, or any other Lord, as appears by the Passage you have cited out of William of Malmesbury, as also divers ancient Charters, particularly those of King William I. and Maud the Empress, and King Stephen, which are divers of them directed, Fidelibus suis, Francis & Anglis, which cannot mean Tenants in Capite, since the Doctor and your self will scarce allow any Englishmen to have then held Lands in Capite of the Crown. Lastly I grant this Word Fideles may sometimes signify the Tenants in Capite of the King; all which being so, I think you cannot deny, that it is not the bare Word, but the Sense it bears in the Place where it is used, that must direct us to its true Signification; and that the Fideles there mentioned to have granted Caruage in the 4th of Hen. III. could not be the King's Tenants in Capite only, I have given you a sufficient Reason which you do not think fit to answer, viz. That Caruage was a general Tax imposed upon all the Lands of the Kingdom, as well what was held by Knight's Service, as what was not; and how your Tenants in Capite could Tax those Lands which were never held by Knight's Service, I desire you would resolve me. And therefore by the Fideles here mentioned in this and many other Records, are not to be understood the Tenants in Capite only, but all other Subjects who owed Fealty; who, though they could not all appear in Person in our great Councils or Parliaments, yet were there by their Representatives the great Freeholders, Lords of Mannors, or else by the Knights, Citizens and Burgesses.

But I must now make some Remarks upon your Interpretation of the Writs of the 16th and 21st of Hen. III. wherein you have certainly very much mistaken the Sense of all the main Words. For in the first Place, as for the

Clerici terras habentes non ad Ecclesias pertinentes, which you interpret to have been *Clerks having Mannors and Military Fees not belonging to their Benefices*, but held of the King in *Capite*, seems to be altogether forced. For whoever heard of Clerks (that is, inferior Clergymen) Parsons, or Vicars of Churches, who held Benefices of the King in *Capite*, and not in *Franc Almoigne*? Or if they had any such, that therefore those Lands so held should be called Lands not belonging to their Churches; for at this Rate the Lands of Bishops, all Abbots, Priors, &c. which held of the King in *Capite*, would have been in your Sense, Lands not belonging to the Church; but who but you and your Doctor ever gave such an unreasonable Comment on those Words?

Nor will that Passage you cite out of *Mat. Paris*, at all favour your Interpretation; for either these Bishops and Prelates there mentioned, gave this fortieth Part of their Moveables in Parliament, with the rest of the Kingdom, or else as Clergymen in Convocation: If the former, then these *Clerici* could have no Votes there in Person; for I believe it would puzzle you to prove, that at this Time any Ecclesiastical Person, below the Degree of an Abbot or Prior, had any Place in Parliament, by reason of his Tenure by Knight's Service in *Capite*, for those Lands he held in Right of his Church; but if you'll have this Tax to be granted by the whole Clergy in Convocation, then such Clerks as you mention could not be there in Person: First, because they are said to be such as had Lands, *quæ ad Ecclesias suas non pertinent*, and so could not have any Place there as Clergymen; nor could they be included under the *Prelati*, since that Word takes in none beneath the Degree of a Dean. And therefore if these Clerks gave any Thing in Parliament, they must do it by their lawful Representatives in Convocation, the Clerks of the Lower House, then called *Procuratores Cleri*: So that take it which way you will, those Clerks could not be present themselves at these Parliaments, when those Taxes of the 30th and 40th Part of their Moveables were given to the King; and therefore either as Laymen or Clergymen, must be Taxed by their Representatives: But indeed the Words *Proceres Regni*, which immediately come after *Episcopi & Prelati* in *Mat. Paris*, sufficiently shews this Grant was made in Parliament. That the Word *Proceres* often includes, not only the Knights of Shires, but Citizens and Burgeesses too, I have already proved, when I spoke of the various Significations of that Word. Nor is your Interpretation of *Liberi Homines*, for Tenants in *Capite*, who Taxed their *Villani*, any other than a meer wresting of these Words; for if they were only those who gave for themselves and their *Villains*, whom you suppose were either their Bondmen, or else their Rusticks or Husbandmen, it is absolutely contrary both to Law and Reason; for who ever heard that Villains or Bondmen, who had no Property either in Lands or Goods, ever paid Taxes? And if you suppose that these *Villani* were only the Rustick Tenants in Soccage by Villain Service of the Tenants in *Capite*, then it is plain that all the Military or Feudatory Tenants of the Tenants in *Capite*, and all Tenants in Free Soccage by certain Rent, were exempt from both these Taxes, since they are not so much as once mentioned in these Writs, neither can be comprehended under these *Villani*, as your self must acknowledge: For if these *Villani* were meer Rusticks, pray tell me what Reason there was to put them Cheek by Jole with their Lords, as they are in the Record of the 16th of *Hen. III.* as if they had given by themselves, as well as the rest of the Freemen of the Kingdom? Or what Reason is there why the Lords (as the Words are in your Record) gave *pro se suis Villanis*, if the *Liberi Homines* there mentioned, had not represented them? Which could never have been said with any Sense, had they been only so many Masters over their Villains: Whereas it here appears, every one of these Orders or Degrees of Men here mentioned, had an equal independent Power to give for themselves, and not one for another. Or else this Word may be meant in a larger Sense, as in the Record of the 16th of *Hen. III.* where they are put in the Nominative Case (as equal to the rest of the Orders of Men there recited) and so could not be Husbandmen, or meer Villagers, but the Inhabitants of Cities and Boroughs. And which Sense Sir Henry Spelman allows in his Glossary; *Villanus est qui in Villa habitat, ut Urbanus ab Urbe, &c. Villa autem propria notat Viculum Rusticanum, sed ex more Gallici idiomatis traducitur*

ad insignia oppida, & ad ipsas Urbes; but take it in what Sense you please, it is plain it could never here mean meer Villagers; nor could all your *Liberi Homines* be only Tenants in *Capite*; for then the Record would have concluded thus, *& Liberi Homines, qui de nobis tenent in Capite*, as it is in the Records you have cited of the 10th of *Hen. III.* to the Sheriff of *Sussex*, and may be found in many other Records, which respect only Tenants in *Capite*. And for further Proof of this Sense of the Word *Villanus*, we need go no farther than these very Records themselves, of the 16th and 21st of *Hen. III.* which you and I have now made use of; in both which Writs there are certain Persons appointed to assise and collect the Aids in every County, and who, by virtue of these Writs, did cause to be elected Four of the best and most lawful Men, *de singulis Villis* of each Hundred in the Counties there mentioned; and then the *Villani* will signify in these Writs, not Villains or meer Rusticks who were not then reckoned *inter Legales homines*. And though 'tis true you have brought some Presidents to prove, that the Tenants in *Capite* gave Taxes for their feudatory Tenants; yet that was only where the Tax was raised upon Knight's Fees alone, and not upon all the Lands of the Kingdom in general, much less upon Goods and Chattels. So that either the *Liberi Homines* mentioned in these Records, must mean all the Freemen of *England*, who by their Representatives gave these Taxes of a 40th or 30th Part for themselves, and all such of their Tenants, who held Estates of Copyhold Leases, for Years, or at Will, or had Estates in Stock, Money, or other Chattels; for otherwise the Taxes could never have been general, nor charged upon moveable Goods of the whole Kingdom.

I have but one thing more to remark upon your Observations of this Writ, which is, that whereas you take notice that the King's Summons was directed to none of the Laity, but the Earls and Barons of the Kingdom; and if so, I desire you to prove to me, that your less Tenants in *Capite* were at all present at those Parliaments; for you have already granted that they were no Barons, and consequently could not be included under that Title; so that if these *Liberi Homines* who granted this Tax for themselves and their Tenants, were not only Tenants in *Capite*, but their Under-Tenants also by Military Service; (as the Doctor himself grants in his Answer to *Argumentum Antinormannicum*,) p. 25. as also in his Glossary, p. 51. then it will follow by his own Concession, that others besides Tenants in *Capite* were under the Title of *Liberi Homines* were Parties to the granting this Tax in Parliament; which is that I contend for. So that unless you can prove that your *Liberi Homines* were all Tenants in *Capite*, you will never make out that none but they had a Right under that Title to appear at our great Councils or Parliaments; and to grant Aids, and joyn in the making of Laws for themselves, and the rest of the Nation, before the Times you allow. To conclude, unless you can also prove that there was a Tenure in *Capite* of Goods and Chattels, as well as of Lands, it will appear by these Aids granted in Parliament of Personal Estates, that all Freemen or Freeholders were alike Free, and consequently had the same Right to appear in Parliament, either by themselves, or their Representatives.

M. But pray make out if you can, by some more evident Proofs, that any other besides Tenants in *Capite*, were admitted into our great Councils; and that these *Liberi Homines* were not Tenants in *Capite*.

E. I think I need go no further than the first Words of the Agreement between King *John* and the Barons, which is still extant on the Close Rolls of the 17th of this King, (*m. 2. dorso*,) beginning thus, *Hæc est conventio inter Dominum Johannem Regem Angliæ ex una parte, & Robertum Filium Walteri, Marescalli exercitus Dei, & sanctæ Ecclesiæ Angliæ, & Rich. Comitem de Clare, &c.* and here follow the Names of divers of the rest of the Earls and Barons, *& alios Comites & Barones, & Liberos Homines totius Angliæ*; so that it is clear this Charter was granted in a great Council of the whole Nation, in which were assembled, not only the Bishops, Earls and Barons, with all your less Tenants in *Capite*, but also all the Clergy, as well the Inferior as Superior, and all the Freemen or considerable Freeholders of the whole Kingdom by whatsoever Tenure; for, as Mr. *Selden* words it in his Titles of Honour, *Fol. 586, 587.* it was made by the King and his Barons, and all the Freemen of the Kingdom;

dom; which Assembly *Matt. Paris* expresses more succinctly by these Words, *tota Nobilitas Angliæ in unum collecta, quasi sub numero non cadebat*; so that nothing can be plainer, than that many other, besides your Tenants *in Capite*, appeared at this great Council.

M. In the first Place, before I answer the main of your Argument, give me leave to tell you, That I cannot allow this Assembly at *Running Mead* to have been truly a Great Council of the Nation, but rather a Rebellious Armed Rout met together without the King's Writs of Summons, and indeed, whether he would or not; and I suppose you will not assert that any Representatives had Votes therein; nor can you shew me that any Knights, Citizens, or Burgesses were summoned to it.

E. I grant indeed that that Assembly was not properly a Parliament, I mean such as we have at this Day, as not being called by the King's Writs; yet since almost all the Bishops, Earls, Barons, Tenants *in Capite*, and all the rest of the Kingdom were then in Arms; it may very well be reckon'd a Common Council or Solemn Convention of all the Freemen of the whole Nation, and that after the most ancient Manner; since all, or the greatest part of the Freeholders of the Kingdom were there present in Parliament. And that this Council is look'd upon as a Parliament in the Eye of the Law, appears by a Writ to the Sheriff of *Northamptonshire*, which is found in the Close Rolls in the 28th of *Henry III.* to this Effect, *That he should not permit any one in his Bailiwick to use any Liberties belonging to the Crown, unless they had formerly been used, ad Tempus Parliamenti de Rune Mead*; quod fuit inter Dominum Johannem Regem Patrem nostrum, & Barones suos Angliæ.

Ch. 22. H. 3.
M. 12. 20. 30.

M. I see that you are forced to confess, that this Assembly was no Parliament in the Sense we now take that Word, nor indeed could be any more than a Rebellious Rout there met, whether the King would or no: And therefore the Word Parliament is not to be understood in this Record in the Sense we now take it, since that Word came not in Use here (instead of *Magnum Concilium*, & *Commune Concilium* & *Colloquium*, a Conference) until about the Middle of *Henry III.*'s Reign; and doth no more point out the Constituent Members of it, than that Word did at that Time. And so the meaning of the Word *Parliamentum* is to be taken in this Record.

E. A. P. p. 71.

E. I think I have a very good Reason, notwithstanding what you have now said, to affirm, That this was a great Council of Parliament according to the Mode of those Times: And tho' I grant it was not called by the King's Writs, since it is certain he avoided calling any, because he utterly refused to grant this Charter at all; yet that is not material; since they being a general and full Assembly, or Convention of all the Estates of the whole Nation, had a just Right to meet, and vindicate their Liberties then outrageously oppress'd, and trodden under Foot by the King. And the King himself owned them as a lawful Assembly, by sending to them, and appointing them to meet in *Rune Mead*, between *Staines* and *Windsor*, on the 15th of *June*, which our Historians tell us they joyfully obeyed; so that he himself admitted them to be a Lawful Assembly of Estates, and consequently for his Parliament, as appears by the Agreement now cited.

Ud. Matt. Paris.

E. A. G. p. 155.

M. I shall not much trouble my self, whether this was properly the great Council or not. But however, I cannot see how Mr. *Selden* could make out, that this Charter was made by, or to all the Freemen of *England*: for it seems to me that there was not the least ground for it. For if under the Words *Liberi Homines*, all the Freemen, or Free-Tenants of what Condition soever, were comprehended; yet here is nothing in this Record that any way proves that they had any Hand in making this Charter; but the true *Liberi Homines* here were only those whom the King calls *Liberi Homines Nostri* in his Charter, and immediately grants them several Relaxations of their rigid Feudal Tenures; by which 'tis apparent, these *Liberi Homines*, were the Tenants *in Capite*, and yet neither was the Charter made by them, as is before intimated: Tho' I confess these were the Freemen which made such a Cry for their Liberties (most of which were but an Abatement of the Rigor, and a Relaxation of the Feudal Tenures, as appears by the Charter it self) the rest were only Followers, and helped to augment the Noise; they were no Law-makers as you imagine; For 'tis

E. A. G. p. 51.

'tis not probable, that those Men that had the Force of the Nation in their Hands, would permit Men of so small Reputation to share with them in Law-making. Those that had the Power of this and other Nations *de Facto*, always did give Laws and Tax the People.

F. Supposing this, (as I have already proved it,) to be a Lawful Common Council, or Parliament of the whole Kingdom, I think I may still affirm that this Charter was made, not only by the King, but by the Bishops, Earls, Barons, and all the Freemen of the Kingdom, who certainly gave their Assent to it, by drawing it up into Form, and by accepting it from the King when pass'd under his Seal, as truly as the *Magna Charta's* of King Henry III. and Edw. I. are called Statutes, for the same Reason as I have already proved to you; or as much as the Petition of Right granted by King Charles I. was a Statute, tho' pass'd under no other Form.

Nor were the *Liberi Homines totius Regni*, to whom King John granted this Charter, no other than the Tenants *in Capite*, as you suppose, since in the Time of Henry II. this King's Father, the Word *Liber Homo* was taken in a much larger Sense, as appears by the Assize of Arms ordained by this King (as it is recited in *Hoveden's History*) where after it is appointed, what Corselets, Helmets, and other Arms every Tenant *in Capite* should find, it immediately follows thus: *Quicumque liber Laicus habuerit in Catallo vel in redditu ad Valentiam 16 Marcarum habeat Loricam, & Cassidem, & Clypeum, & Lanceam; Quicumque Liber Laicus habuerit in Catallo [ad Valentiam 10 Marcarum habeat] Hurbergellum, & Capelet Ferri, & Lanceam: Et omnes Burgenſes, & tota Communia liberorum hominum habeant Wambais, & Capelet ferri & Lanceam:* Where you may observe, that every Freeman who was worth in Rent or Goods to the Value of 16 Marks, was to find as much Arms for the Defence of the Kingdom, as he that possessed a whole Knight's Fee; and the meanest Townsman, and the whole Commonalty of Freemen (for so I translate the Words, *Communia Liberorum hominum*) were to find a Caplet or Head-piece of Iron, besides other Weapons. And the 2d Article of King John's Charter says expressly, *Concessimus etiam & omnibus Liberis Hominibus Nostreis Regni Angliæ, pro Nobis & Heredibus Nostreis in perpetuum omnes Liberales subscriptas, habendas & tenendas eis, & heredibus suis de Nobis & Heredibus Nostreis:* Which the Doctor himself renders thus: We have also granted to all our freemen of the Kingdom of England, &c. And sure then this Charter could not be made to none but Tenants *in Capite*, unless you will suppose that none but they were Freemen, and all the rest Slaves.

Nor was this Charter only made to relax the Severity of the Feudal Tenures, as you suppose; since there are divers other Clauses in it which concern all the rest of the Freemen, and Freeholders in England, as well as they. For besides the First and Second Chapters of this Charter, which grants and confirms to the Church of England, and to all the Freemen of the Nation, their Rights and Liberties; if you please better to consider it, you will find that there are several other Chapters in this Charter, by which all other Freemen, as well as the Tenants *in Capite*, have an Interest in the Liberties there granted, as you may see by the 10, 11, 12, 13, 15, 16, 22, 23, 24, 25. and above 30 other Chapters or Clauses therein express'd, which are granted, not to Tenants *in Capite* alone; but either to Ecclesiasticks, or other Lay Freemen of the whole Kingdom. But to prove this a little further, I shall give you but one or two Instances out of this *Magna Charta*; and that too in the Doctor's own Translation: Article 48. 'No Freeman shall be taken, or imprisoned, 'or disseised of his Free Tenement, or Liberties, or Free Customs, or Out- 'Lowed, or Banished, or any ways Destroy'd, nor will we pass upon him, or 'commit him to Prison, unless by the Legal Judgment of his Peers, or by the 'Law of the Land (*i. e.* by Legal Process.) The other is the 49th Article of 'this Charter, That we will not sell to any Man, we will not deny any Man, 'or delay Right or Justice: Now judge your self, whether these two Articles were made to the Tenants *in Capite* alone, or to all Freemen of the whole Kingdom.

And hence it also plainly appears, that the same Body of Freemen to whom this Charter was made, were likewise present, and gave their Assents to the making

making of it : Nor were *Vassals*, or Feudatory Tenants of the Bishops, Abbots, Great Lords, and other Tenants *in Capite*, Persons so inconsiderable as you would make them, that they only should come hither but as Followers, to augment the Noise ; since I have already proved from *Bracton*, that there were divers of them Men of great Estates and Power in their Countries ; besides the Tenants of those Abbots and Priors, who (as I have already mentioned) did not hold *in Capite* of the King at all, and yet made a great Part of the Kingdom ; besides Tenants in *Petyt Serjeanty*, and those that held of great Honours, or Manors, who could never be represented by the Tenants *in Capite* at all. And therefore I must (notwithstanding what you affirm to the contrary) look upon all these Persons for as good Law-makers, as the greatest Lords or Tenants *in Capite* of them all ; since the main Force of the Nation did not lye in them, but in their Feudatory Tenants, who would never have followed their Lords in this Assembly, if they had not look'd upon themselves as having as good an Interest in the Rights and Liberties they demanded, (as appears by the like *Salvo* of all their Liberties) as their Lords themselves ; and also as good a Right as they, in giving their Assent to them, when they were to be pass'd into a Law, as they were by this Charter ; since these Feudatory Tenants were not at all obliged by their Tenure to obey their Lords Summons at any other Warlike Expeditions, but where the King, or his Lieutenants, went out in Person.

M. I am very well satisfied that this could be no Parliament, for the Reasons already given : And tho' I grant that these Charters were made to, and in the Presence of the greatest Part of the Clergy, Earls, Barons, and Freemen of the Kingdom ; yet this proves not that they had any Vote, or Suffrage, in making of them ; nor indeed could they ; for the Great Charters were only the Petitions of the People, drawn into the Form of a Charter, and passed under the King's Seal, as his mere voluntary Free Grants and Concessions, without any Votes or Authority from the People. And therefore the Great Charters of *Henry III.* recites them to have been made of his mere *Grace and Free Will* ; as it is in the Preface to it. But pray answer me a few plain Questions, concerning King *John's* Charter ; which if you can resolve, I may be inclined to believe there might be some other Great Council, besides that of Tenants *in Capite*. The first is, If this Common Council of Tenants *in Capite*, were for Assessing of Aids and Escuage only, (as you suppose it is provided by the last Clause of this Charter) why was the Cause of the Meeting to be declared in every Writ of Summons, to the Great Barons, and Tenants *in Capite* ? If they were only summoned about Aids and Escuage, or other ordinary Business of Course ; sure then the Cause of Summons need not to have been declared as it is here provided ; *in omnibus Literis Submonitionis, causam Submonitionis illius exponemus.*

F. I will give you an Answer to this Question immediately ; but before I do it, let me tell you that you are much mistaken, in saying, that the Great Charters (because they were the King's Free Concessions) were therefore passed without any Votes, Suffrages, or Authority of the People of *England* ; since I have already proved, in our Discourse concerning the *Legislative Power*, that the Matter of those Charters was no more than an Affirmative of the Common Law of *England*, long before your Conquest ; and that the Peoples Consent and Suffrage was sufficiently given, in their drawing them up, and offering them to the King to be sealed, and accepting them from him when he had done it : And therefore the Great Charters are always called Statutes, in our Ancient Records, and Acts of Parliament. But to answer your Question ; I suppose that the King, besides the ordinary Business of their Assessing Escuage, had often other Affairs of Moment to be transacted with, and communicated to his Bishops, Great Lords, and Tenants *in Capite*, in which the rest of the Kingdom were not at all concern'd ; such as giving the King their Advice, as a Great Council, concerning divers weighty Affairs, (as in the Business of *Sicily*, mentioned in the first Record I have cited) as also about undertaking Foreign Wars against *France*, *Scotland*, *Wales*, &c. in which they were bound to follow, and assist him, together with their Under-Tenants, according to their respective Tenures ; and therefore it was but Reason that they should have timely Notice, that they might give their Advice in it ; as also that they might either come, or stay away, according to the Greatness or Urgency of the Occasion ; and might also give their Under-Tenants

Notice,

Notice, to provide themselves with Horses and Arms, and all Things necessary, in case a War should be agreed on: Which, I think, are sufficient Reasons for thus expressing the Causes of their Meeting in the Writs of Summons.

M. Admit this were so, (which I shall yet take further Time to consider of) pray tell me, in the next place, if all your Inferior Barons, *Vassals*, or Lords of Manors, &c. supposing them either to have appeared in Person, or else as chosen for Knights of Shires, who were the Members of the Great Council of the Nation; I pray tell me, why there should not have been the same Care taken, that they might be also summoned as well as the Tenants *in Capite*? Certainly they came not to them by Instinct; nor is it scarce probable that they would leave their Country-Business, to travel from one remote Part of *England* to another, to these Great Councils, (which seldom continued above three or four Days) if they had not had a Right so to do.

E. I shall answer you in few Words; because it was not at all necessary to express that Clause you mention for them all; since it was sufficient therein to follow the old Course of Summoning the Common Council of the Kingdom; for doing which, it had always been the Custom to give sufficient Notice by Writs of Summons of their Meetings: Whereas in this Council of Tenants *in Capite*, since there was by this Charter some Alteration in the Manner of their Summoning, so there was also for expressing the Cause of their Meeting: For whereas before that (as the Doctor himself allows) all the Lesser Tenants *in Capite* had particular Letters, or Writs of Summons, expressing the Cause of their Meeting; they were for the future to be summoned by General-Writs directed to the Sheriffs; and therefore it was but Reason, that there should be a particular Clause reserved for their General Summoning, which there was no need of in those Writs that were issued for the Summoning the rest of the People, or Commons, to the Great Council, or Parliament; as I doubt not but it would appear, in case we had those Writs to produce: In which likewise there was anciently often expressed the particular Cause of their Meeting; as there was, for instance, in those famous Writs to the Lords and Commons of the 49th of *Henry III.* which the Dr. hath given us in his Answer to Mr. P. B. A. P. p. 58.

M. But I have still a greater Objection behind than either of the former. You cannot deny, but that by the first Clause of King *John's* Charter, (which I have made use of) all Aids, and Escuages, were to be imposed by the Common Council of the Kingdom: And *Littleton* himself tells us, in the Second Book of his Tenures, *That Escuage is always to be assessed by Parliament, upon those that failed to do their Services, after the Expedition was ended.*

Now if this had not been a Right Inherent to the Great, or Common Council of the Kingdom, but that the Tenants *in Capite* alone assessed it in King *John's* Time; how came they to lose that Privilege, and the Great Council of the Kingdom (or Parliament) to get it, if the former had not been the Only Great Council at the first?

E. I hope to give you as satisfactory an Answer to this, as I have to the rest of your Demands. This Alteration might have fallen out two ways; either according to *Cambden's* old Manuscript Author, cited in his Introduction to his *Britannia*; the Sum of which is, That when King *Henry III.* after his great Wars with *Sim. Montford*, and the Barons, had ruined many of them; he, out of so great a Multitude, (which was before seditious and turbulent) called the best and chiefest of them only by Writ to Parliament; who, after that Time, became Barons by Writ, and not by Tenure, as they were before. And as for the Lesser Sort of them, called *Barones Minores*, they might be wholly resolv'd into the Body of the Commons, or ordinary Sort of Freeholders: And the King being fearful of any farther Increase of Power in these Barons and Tenants *in Capite*, might no more desire their Company at the usual Feasts of the Year, whither before they used to come *ex more*; and so their Power fell of course to the Council, or Parliament, of which before they only made a Part. Fig. 12.

Or else it might happen from the Negligence of the Tenants *in Capite* themselves; who growing weary of their Attendance, might neglect to come to those Common Councils held of course, because of the great Trouble and Charge of those Journeys; and the King being as willing to dispense with their Presence, this Court was lost by Non-usage; and so the Judicial Part of it remained in

the House of Peers, and that of assessing Eſcuage, and adviſing and giving Aids in matters of War, fell wholly to the Great Council of the Kingdom; of which theſe Tenants *in Capite*, by their being capable of being Elected Knights of Shires, ſoon became the Principal Members.

But that I may have my turn to ask Questions; Pray tell me, if your Common Council of *Tenants in Capite*, were the ſole Council of the Kingdom, or Parliament as it is now called, why are there no other Rights or Privileges reſerved to this Council, but this of aſſeſſing Eſcuage? Were not the Powers of granting other Taxes (which could not be included under the Word Eſcuage,) and alſo of giving their Aſſent to Laws, things of as great (nay greater) moment than this of aſſeſſing Eſcuage?

M. I ſhall give you as ſhort and ſatisfactory an Answer as I can to your Queries. There was no need of inſerting any Clauſe to this Charter, of reſerving or conſerring any Power to this Common Council of granting Taxes, and giving their Aſſent to Laws, becauſe they were things which at that Time they had no reaſon to complain of; ſince we do not read that King *John* (as Arbitrary as he was) ever took upon him to make any new Laws without their Conſents; and beſides, it was implicitly reſerved to them by the laſt Clauſe of this Charter, *viz. Saving to the Archbishops, Bishops, &c. Earls, Barons, Knights, and all others, &c. the Liberties and Free Customs which they had before.* So that there was no need of any other Clauſe than this, becauſe it had been not only the Cuſtom but the Law of the Kingdom, for the King to lay Taxes and aſſeſs Eſcuage upon the Nation, without the Conſent or Aſſiſtance of this great Council; which grew now ſo great a Grievance, that they would not be contented, until the King by this Charter had renounced it.

F. I ſhall not now trouble my ſelf or you, to confute this miſtake of yours, That the Kings of *England* could legally raiſe Taxes upon all their Subjects without Conſent of their great Council, or that they ever exerciſed ſuch a Pre-rogative, unleſs it were in the violent Reigns of the Two *Williams*; and then if it was ever done, it was only upon their *English*, and not their *Norman* Subjects; the latter being exempt from it by the very *Magna Charta* of King *William I.* by your own Confeſſion. Nor would they, I believe, have born it at his Hands; but I ſhall ſpeak more particularly of this another Time. Only pray give me leave to ask you this one Queſtion? If this Charter of King *John* had been intended as a conſtant ſtanding Rule or Form, not only for this, but all ſucceeding Common Councils or Parliaments; what could be the reaſon that this Clauſe you ſo much inſiſt upon, of Summoning all Biſhops, Abbots, Earls, Barons, and all the reſt of the Tenants *in Capite*, ſhould be omitted in the great Charter of *Henry III.* granted in the 2d Year of his Reign; and but Three Years after the 17th of King *John* (when theſe Charters were firſt granted) as alſo when it was again confirmed in the 9th of *Henry III.*? For can any one of Senſe imagine that ſo material a Clauſe as this, and ſo expreſs for the Rights and Privileges of the whole Body of Tenants *in Capite*, as the ſole Representatives of the whole Nation, could have been omitted, had they alone in thoſe Times conſtituted the Common Great Council of the whole Kingdom? How then comes it to paſs, that in all the Records of *Henry III.*'s Reign, wherein this Charter is mentioned, it is always recited *Magna Charta Noſtra*, *viz.* his own Charter, without taking notice of his Father's? I ſhould be glad to receive a ſatisfactory Answer to this Queſtion from your ſelf or any other intelligent Perſon.

M. I hope I may give you a ſatisfactory Answer to this Scruple, which I think may be thus ſatiſfied. I conceive that the firſt Great Charter we have, which is commonly attributed to *Henry III.* and ſtiled his Charter in our Statute-Books, was properly the Charter of *Edward I.* or perhaps, rather his Explication or Enlargement of thoſe Charters of King *John* and *Henry III.* For we find not the Great Charter, either of that or King *John*'s, in any of the Rolls, until the 25th of *Edward I.* and he had a greater Sum of Money for confirming this Charter, than *Henry III.* had. Now in this Charter then confirmed, there is no Proviſion made for any Summons to Great Councils or Parliaments; and the Reaſon may well be, becauſe the Conſtitution of Great Councils or Parliaments was lately changed from what it was in the beginning.

of King *John's* Time, and till the 49th of *Henry III.*; nor perhaps was it so fixed, and peremptorily resolved on at this Time, what it should exactly be for the future, as to have it made an Article of the Charter. And to this Conjecture the frequent Variations of Summons to Parliaments in those Times, do give a probable Confirmation.

F. I am not at all satisfied with this Supposition of yours. For I doubt not but to prove that it is altogether vain, and grounded upon no good Authorities, either from History or Records; but I shall shew you before I have done, that the *Magna Charta* which we have still upon Record, by *Inspeximus* of *Edw. I.* is the very same Word for Word, in all the material Parts of it, with that of *Henry III.* both of the 2^d and 9th Year of his Reign; and that there was no Alteration at all made as to the manner of it, as summoning or chusing Members of Parliaments from the beginning of this King's Reign to the very end of it. Nor yet in the Time of *Edward I.* as you suppose.

M. I should not be displeased to see that proved, though I think I am able to shew you the contrary. But before we proceed to that, I must needs tell you, I am not yet satisfied that there ever were anciently Two Councils; one of the Tenants *in Capite*, and the other of the whole Kingdom; for methinks not only your self, but Mr. *Petyt*, and Mr. *Arwood* his Second, have fallen very short of their Proofs they have brought in this Point: and there is nothing in the Doctor's whole Answer to them, in which (in my Opinion) he hath obtained a clearer Victory; therefore pray give me some better Proofs of this Distinction, if you have any.

F. I did not imagine I should have needed to have spoken any further upon that Head; yet since you now require it, I shall obey your Commands. Since therefore you tell me that the Times before your Conquest are obscure, and the Authorities uncertain, I will give you a short History of these Councils, beginning with King *William I.* and so going down as low as *Henry III.* So far then we are agreed, that the Council of Tenants *in Capite*, met *ex more* at the great Feasts of the Year; and that they also granted the King Aids, or Subsidies, to be Levied upon themselves alone; as I grant, appears by the Writ of 19th of *Henry III.* which you have but now cited, directed to the Sheriff of *Suffex*.

But that this Council which was thus held *ex more*, was also often Summoned to meet at other Times when the King's Occasions required it, is also as certain; as appears by this Writ of the 26th of the same King, which I shall read to you, *Rex Vice-comiti Northampton, &c. Præcipimus tibi sicut alias Præcipimus, quod Summoniri facias Archiepiscopos, Episcopos, Comites, Barones, Abbates, Priores, Milites, & liberos homines qui de nobis Tenent in Capite, eodem modo scribitur omnibus Vice-comitibus Angliæ:* Which Writ extending only to those who held *in Capite*, could never be a Summons to the Common Council of the whole Kingdom: for then this Restriction had been needless, *qui de nobis Tenent in Capite*; and it would have been known who had a Right to come to this Council, if these Words had not been inserted; so that this seems to make a plain Distinction between these *Liberos homines qui de nobis Tenent in Capite*, and the rest of the Freemen of the whole Kingdom.

But when *Eadmerus* and other Ancient Historians mention the great or Common Council of the whole Kingdom (afterwards called the Parliament,) then their Expressions are more general and comprehensive; for proof of which, pray consult the Old *English Saxon Annals*, continued down to the Time of *Henry I.* wherein *Anno Dom. 1085.* (being the last Year of *William I.*) there is a remarkable Passage which I shall here give you in *English*. 'At *Christmas*, the King (*viz. William I.*) was at *Gloucester* with his Nobles, and there held his 'Curia or Court (in *Saxon* his *Hired*) Five Days; (and immediately after it follows thus :) Presently after this he held a Great Council [in *Saxon*, *Mycel Getheat*] where he had many great Discourses with the Nobles, &c. Now it seems plain to me, that this ordinary Court (here called his *Hired*) could not be the Great Council of the Kingdom; for to what purpose should it meet again so quickly, if it had been the Common Council of the whole Kingdom? Or, why are they here called by different Titles, the one his *Hired*, or Court, and the

Rot. Claus.
m. 7. dorso.

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Oxford, 1692.
in Saxon and
Latin. p. 185.

2 Vol. F. 451.

other the *Mycel Getheat*, the Great Council; which is also called *commune Concilium totius Regni*, in Sir Henry Spelman's Councils in this very Year.

Lib. 3. F. 58.

And to shew you more plainly the Difference between this Great Council of the whole Kingdom, and the Lesser Council of the King's Barons and Tenants *in Capite*; pray see *Eadmerus*, who relating what was done in a Great Council held at *Easter*, immediately before the Invasion of Robert Duke of Normandy, in the 2^d Year of Henry I. says, there met *tota Angliæ Nobilitas, cum Populi numerositate*; and then Archbishop *Anselm* engaged for the King, that he should Govern the Kingdom according to the just Laws thereof. Where you see, that besides the Noblemen and Gentlemen, here called, *Regni Nobilitas*, there was also a great Number of the Commons, here termed in the Barbarous Latin of that Age, *Populi numerositas*.

But when the King held his *Curia* of the Great Lords and Tenants *in Capite* alone, the Expressions are more particular; as may appear by many Charters of our first Norman Kings to several Abbeys of their own Foundation, which are said to be made *Consilio & Assensu Baronum nostrorum tam presulum quam Laicorum*; as you will (for Example) find it in the Charter of Henry I. to the Abbey of *Abington*, as it is exemplified in the Ancient Manuscript Register of that Abbey, now in the *Cottonian Library*; in which Book you will find more of the like Nature; which plainly make out this Difference between this Lesser Council of the King's Barons and Tenants *in Capite*, and the Great Council of the Kingdom.

And for further Proof of this, pray see the Instrument of King John's Resignation of his Crown to the Pope, as you will find it at the end of Doctor B's compleat History; which is recited to have been done *Communi Concilio Baronum Nostrorum*, that is, by the Common Council of the King's Barons and Tenants *in Capite*, a great Number of whom were there present in Arms against the Landing of the French King, then expected. And yet this was never looked upon to have been done *per Commune Concilium Regni*, since this Resignation was declared void by the Bishops, Lords, and Commons in full Parliament, in the 40th of Edward III. because done *sanx lour Assent*, as it is in the Parliament Roll of that Year.

But whenever the whole Great Council or Parliament was summoned to assemble, then this Lesser Council of the Tenants *in Capite*, must needs meet also, as being a principal part of it. And then the Expressions were more comprehensive, as I have already noted; and our Ancient Historians do, in my Opinion, by their Expressions, plainly signify an Union of both these Councils to make up the Common Council of the Kingdom; as appears by the Letters which the Prior of *Canterbury* wrote to the Pope, upon the Election of *Ralph* Bishop of *Recheffer*, in the 14th of Henry I. to the See of *Canterbury*, as you find them in *Eadmerus*, (Lib. 5. Fol. 111.) and which is there said to have been made *adunato conventu totius Angliæ*; that is, in the united Assembly of all *England*, viz. as it follows immediately, the *Episcopi, Abbates & Principes Regni, & ingens Populi Multitudo*. So likewise *Hoveden* in his History, (Fol. 273.) Anno 1121, (being the 18th of Henry I.) relates the King's Marriage with the Lady *Adeliza*, Daughter to the Duke of *Lovain*, to have been celebrated at *Windsor*, *adunato Concilio totius Regni, i. e.* in the United Council of the whole Kingdom.

M. I am not yet satisfied with your Proofs: And I doubt not but to shew you that this Distinction of your Friends Mr. P. and Mr. A. his Second, between the Common Council of the Kingdom, and the Council of the Great Lords and Tenants *in Capite*, will prove but a meer *Chimera* of those Gentlemen, from whom you have borrowed it; for there was indeed but one Common Council of the Kingdom in those Times, viz. that of the Bishops, Earls, Barons, and other Tenants *in Capite*.

And therefore in answer to your first Authority from the *Saxon Chronicle*, I shall shew you another of the same King's Reign, which will shew the different Expressions of this great Council by *Hired*, and *Micel Getheat*, to have been the particular Fancy of that Monkish Writer, and it is from *Gervas Dorebornensis, de Actis Pontificum Cantuariens. Ecclesie*, where you may see in the *Decem Scriptores*, this Passage, Anno 4. Regis Wilhelmi I. Anno Dom. 1070.

64. 1351.

Laufrancus Cadomensis Abbas electus fuit Archiepiscopus Cantuariensis a Senioribus ejusdem Ecclesie cum Episcopis, & Principibus, Clero, & Populo Angliæ in Curia Regis in Assumptione Sanctæ Mariæ; where you may see that this Confirmation of the Archbishop was made in the great Council of the Kingdom, which is here called collectively, or all together, (and not one Part of it only) Curia Regis. As for the Words which make up the constituent Parts of this Council, we have sufficiently debated them; and therefore I need say nothing more concerning them.

But tho' the Dr. has given us more Authorities to prove this, yet I shall make use of but one more from *Eadmerus*, it is in the Reign of Henry I. *Fol. 129.* thus, *in subsequenti Nativitate Dom. Christi Regnum Angliæ ad Curiam Regis Londoniæ pro more convenit, & magna Solemnitate habita est, &c.* This Instance is full in all Points; here is the whole Kingdom, that is, the whole Baronage or University of *England*, (for *Bracton* tells us, the whole Kingdom consisted of Earldoms and Baronies) who met according to Custom, at the King's Court: And hence it is manifest, that at those Times the Common Council of the Kingdom was held; and from this also, as from the former Instances, that the *Barones, Principes, & Optimates, & Majores Regni*, did at those great Feasts, *pro More*, according to the Custom, frequent the King's Court, and were the only Persons that constituted that great Assembly.

F. But pray give me leave to interrupt you a little. Did I not tell you but now, that the King did often convene the Common Council of the whole Kingdom to meet the Bishops, great Lords, and Tenants *in Capite*, at one of these Feasts; and so it might be an Assembly *ex More* in respect of them, but extraordinary to all the rest of the Kingdom; and this often happened at other Times as well as at these Feasts, according as the King's Occasions required, when all the others were summoned on purpose. *P. R. C. Pag. 130.*

M. I have already answered that Objection; and granting it might be so, it does not prove it was so: But I desire you to tell me what you can say to this Expression in the Authority I have now made use of from *Eadmerus*; *Regnum pro more convenit*, which is spoken of the most general Council when the Kingdom of *England* then met at the King's Court. So that your small Criticism upon the Words *adunato Conventu* or *Concilio*, as if they signified this Union or Conjunction of two Councils into one, is but a meer Fancy of your Authors, those Words signifying no more than a gathering or meeting together of all the Persons that constituted that Assembly, as appears by these Words in *Eadmerus*, *Adunatis* (without either *Præcepto* or *Sanctione Regis*) *ad Curiam ejus in pascha Terræ Principibus, i. e.* the chief Men of the Nation being assembled at his Court at *Easter*. *Fol. 90.*

But as for your main Instance of King *John's* Resigning his Crown to the Pope in a Common Council of the great Lords and Tenants *in Capite*, but not of the Common Council of the Kingdom, I confess it were very considerable if it were true; for tho' in all the Charters of this King's Resignation, the Words you mention, *viz. Communi Concilio Baronum nostrorum* are inserted, yet it could not be a great Council; since tho' I grant that all the Tenants *in Capite* were at that Time summoned to appear in Arms against the King of *France*; yet it being a Military Summons for the gathering together of an Army, and not for the Meeting of a great Council; for the five proscribed Bishops were in *France*, and the Barons that sided with them, fled beyond Sea, not daring to appear; so that this Resignation having been Executed before so small a Number of Barons as appears by the Witnesses to it, *viz. but Two Bishops, the chief Justiciary, Seven Earls, and Three Barons*, without subjoining *& aliis Episcopis, Comitibus, & Baronibus*, or *& Communitate*, or *tota Communitate*, it does not appear that there were any more present; so that this could not be such a Council as was constituted by King *John's* Charter, that is, it was not a Parliamentary Council, or general Representative of the whole Nation; and therefore the Parliament in the 40th of *Edward III.* might very well say, the Resignation was made without their Assent; and so I think this great Argument of yours comes to nothing. *B. A. 7.*

F. Pray do not triumph before the Victory. For I doubt not but to prove, notwithstanding what you have said, that this was a real Common Council of the

U. Matt.
Page 254.

the Barons and Tenants *in Capite*, in which King *John* resigned his Crown, tho' not of the Kingdom; which I prove thus. First, it appears by all our Historians, that King *John* had just summoned all the Earls, Barons, Knights, and Freemen of the Kingdom, whoever they were, and of whomsoever they held, to appear in Arms; which made so vast an Army, that after all the ordinary Rabble were sent home, *Matt. Paris* tells us, that the Knights, Esquires, and Freemen that stay'd behind, made an Army of Sixty Thousand Men, who were encamped at *Barham Down*, not far from *Dover*, where this Resignation was executed: So that this being almost as great a Meeting as that at *Runne Mead*, the King might about the same Time very well have summoned at least a great Council of all his Tenants *in Capite*, to countenance this Resignation; and that he did do so, the Charter it self says expressly; which had it been otherwise, would have appeared a notorious Lye to the whole World. Nor are your Objections to the contrary considerable. For, you say this was only a Military Summons, and not to a Common Council, yet such a 'one as was constituted by this King's Charter, which sure could not be at this Time, when that Charter was not yet made till the Year after, before which, you grant, that the great Councils, might have met without the 40 Days Summons, expressing the Cause of their Meeting; and if they could meet *ex More*, as you grant this Council did at the great Feasts of the Year, without any Summons at all, sure they might as well meet now on such an Exigency: The King had, 'tis true, summoned them at first upon another Occasion; but say you, there was so small a Number of Barons at this Meeting, that it could not be a Common Council of the whole Kingdom; neither do I say it was, but the contrary; but how doth it appear it was not? Why say you, Five of the Bishops were then fled into *France*, with a great many of the Barons of their Party. The latter is not true in Fact; few or none of the Barons siding with these Bishops; but as for the Bishops, what if Five were absent? Were there not enough left to have made a Common Council of the rest of the Tenants *in Capite*? Well, but there were but Two Bishops present, and Seven Earls, and Three Barons, as appears by their Names at the End of this Charter, without any mention of more, or of the whole *Communities* being there. A special Reason, as if no more could be present at this Assembly than whose Names are to it; by this Rule, the great Charters of King *John*, and 9th of *Hen. III.* were not made in a great Council of the whole Kingdom; for there are no Witnesses Names expressed at the End of them; 'tis true, at the Beginning of these Charters it is said they were done by the Council of certain Bishops, Earls, and Barons, which yet were but a very few more of all Sorts than there are mentioned at the End of this Charter of King *John's* Resignation: So that this Appearance of the Bishops, Earls, and Barons, and Tenants *in Capite* is meerly precarious; for if more might very well have been there, it is most likely they were, notwithstanding the Paucity of the Witnesses to this Charter; since those were added only for Form sake, and were commonly those who were nearest the Throne when the Seal was put to it.

I confess your first Objection is more material from *Eadmerus*, of the whole Kingdoms meeting the King at *Christmas ex more*, without any Summons mentioned; to which it may be reply'd, that there might be a Summons to the whole Kingdom to meet, as well as to the Tenants *in Capite*; and this happening at *Christmas*, one of the usual Times of their Meeting, this Author might apply the Title of this Court to the Council of the whole Kingdom: And that this was so, will appear from an *Anonymous* Author who wrote in *H. I.* his Time, published by *Mr. Sylas Taylor*, in his History of *Gavel-kind*, (p. 194.) who relates this Election of Archbishop *Lanfranc* to have been made *Communi Consensu & Consilio omnium Baronum suorum, omniumque Episcoporum, & Abbatum, totiusque Populi*; which certainly must mean somewhat more than your Council of Tenants *in Capite* alone. †

And this also is confirmed by *Mat. Paris*, who has been so careful, as to mention a Summons to a great Council immediately after the holding of the *Curia* of Tenants *in Capite* at *Christmas*; the Words are thus: *Anno Dom. 1237. i. e. the 21st of Henry III. tenuit Rex curiam suam ad natale apud Winton misit, autem continuo per omnes fines Angliæ Scripta Regalia præcipient omnibus ad Regnum spectantibus, Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus & Baronibus, ut omnes in octabis Epiphaniæ Londoniis convenirent.* Now pray

pray tell me, if this *Curia* held *ex more* at *Christmas*, had been the Great Council of the whole Kingdom, consisting of the Archbishops, Bishops, Abbots, Earls and Barons, and other Tenants *in Capite*, to what purpose should the King *continuo*, (*i.e.* immediately after) issue out his Writs for Summoning the very same Persons to meet him at *London* on the *Octave* of *St. Hillary*, when they were then all with the King at *Winchester*; and that he might then have communicated what he had pleased to them.

Or what have you to say to the *Curia* or Council held before, in the Ninth of this King, but Eleven Years after King *John's Magna Charta*, when the Great Charters were confirmed, and an Aid granted by the whole Kingdom? which *Matt. Paris, Anno Dom. 1225.* relates thus: (which tho' I gave you at our last meeting, it will not be amiss to repeat again:) *Rex Henricus post natale tenuit curiam suam apud Westmon. presentibus Clero & Populo cum Magnatibus Regionis*; which Words (as I have already urged) must comprehend some other Persons than your Tenants *in Capite* alone; otherwise the Word *Populos* had been altogether in vain. So that you see the Common Council of the whole Kingdom was often held at the same Time with the ordinary *Curia*, and is by way of Excellency called by the same Name as we at this Day call the Great Council of the Kingdom, the High Court of Parliament: And *Curia* and Court differ no more than a *Latin* Name from an *English*; which is likewise very well confirmed and explained in the Chronicle of *Walter of Coventry* (to be found in divers Libraries) who lived in the Reigns of King *John* and *Henry III.* and speaking of this very Council or Parliament (which though it might begin at *Christmas* with the *Curia*, yet it seems held on till *Candlemas*) when the Commons were joined to it; he says thus; *In Purificatione beate Mariæ convocantur apud London, Proceres Angliæ, ibiq; tractatu habito diffusiore, cum Clero, & Populo ibidem convocato, Rex concessit Libertates tam Ecclesiæ, quam Regni, quam Foreste, sicut carte sue sunt inde confectæ.* Now I leave it to your self to judge, whether by these Words, *Tractatu diffusiore habito cum Clero, & Populo, &c.* (put after the calling of the *Proceres*, *i.e.* Great Lords and Tenants *in Capite*), any thing can be meant but the inferior Clergy and Commons: All which being joined in one Body, made up the *Commune Concilium Regni*. And that this was so, appears by the date of this Great Charter it self, *11 Februarij nono Henry III.* But that the whole Council or Parliament when thus joined, was likewise called *Curia Regis*, I can prove by several Examples; Among which see the Stat. of *Merton* in 20 *Henry III.* beginning thus; *Provisum est in curia Domini Regis Henrico, &c. coram Will. Cant. Archiepiscopo & Episcopis suffraganeis suis, & coram majore parte Comitum & Baronum Angliæ ibidem existentium pro Coronatione ejusdem Regis, pro qua omnes vocati fuerunt, ita provisum fuit, & concessum tam a predictis Archiepisc. Episc. Comitibus, Baronibus, quam ab ipso Rege, & Aliis.* Now who can these *Alij* mean, coming thus after *Barones*, but the Commons as now understood?

M. I confess these Authorities you have now brought carry some Colour of an Argument, but if they are look'd into will signify little. To begin with your first Quotation from *Matt. Paris*; Suppose I grant that there was a *Curia ex more* held at *Westminster*, at which there then appear'd at Court only a small number of the Bishops, Lords, and great Tenants *in Capite*: But the King not finding them enough for the great Affairs he had then to communicate to them immediately issued out his Royal Writs to all the Orders of Men there mentioned, to appear at *London* on the *Octaves* of *St. Hillary*; but how can you affirm there were any Commons then summoned in the Sense in which they are now taken, the Barons being the lowest Order here expressly mentioned? But if you would but have read the Words that immediately follow in this place you have now cited, you would easily see that your Knights of *Suites* and *Burgesses* could not then be there; the Words are these, *venit igitur die Sancti Hillarij Londonias infinitum Nobilium multitudo*: How could these Representatives of the Commons have been elected and returned in so short a Time as between *Christmas* and Eight Days after *Twelftide*? So that there could have been scarce Three Weeks Time from the Date of the Writs presently after *Christmas-day*, to the meeting of the Parliament. But the Truth is,

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by this *infinita Nobilium Multitudo*, who are here said to have come to *London*, is to be understood the great Number of the smaller Tenants *in Capite*, who all appeared at this Council according to King *John's* Charter: Whereas your Knights of Shires, Citizens and Burgeſſes, if they had all come at that Time, could not be called *infinita Nobilium Multitudo*, as not conſiſting at this Day of 600 Perſons; and ſure would have been fewer then. But as for your other Authorities, if this be true I have now laid down, they will be as eaſily answered; ſince by the word *Populus*, (put before, and diſtinct from the *Magnates*, in the Paſſage you have now quoted from *Mat. Paris*) theſe ſmaller Tenants *in Capite* are to be underſtood; and by *Magnates*, the Biſhops and Great Lords. And this alſo explains the like Phraſe you now cite from *Walter of Coventry*; where by *Proceres & Populus*, are to be underſtood the ſame Orders of Men, as by *Magnates & Populus*, in *Mat. Paris*: So that it was with the Smaller Tenants *in Capite*, and the Inferior Clergy, with whom the King had this larger or more diffuſive Treaty; as this Author words it.

E. I confeſs, you have now put a very fair Gloſs upon theſe Places I have now made uſe of: But 'tis an Hundred Pities that ſuch a fine Hypotheſis ſhould have no better Proofs, than bare Surmiſes, to ſupport it; for that is all the Authority that I can ſee you bring for your Senſe of this Word *Populus*, for the ſmaller Tenants *in Capite*, and not for the reſt of the People; but I ſee no good Authority as yet brought by you to prove it, except that Claufe in King *John's* Charter; which if (as I have lately ſhewed you) it will bear a quite different Interpretation, all that you have ſaid upon that Head will ſignify nothing. Therefore, as for the main Argument you raiſe from the Words, *infinita Multitudo Nobilium*, in *Mat. Paris*, that they could not be the Knights of Shires, together with the Citizens and Burgeſſes, becauſe they could not be ſuch an infinite Multitude as this Author here mentions to have met at *London*; as alſo becauſe of the Shortneſs of the Time of the Summons: If theſe are material Objections againſt our Opinion, ſo it will be likewise againſt yours: For how could this be a Great Council, according to King *John's* Charter, which expreſſly provides for Forty Days Summons, for the Tenants *in Capite* to come to this Aſſembly? And if ſo be this Uſage was broken at this Time, upon ſome urgent Occaſion, in reſpect of them; it might be ſo alſo as to all the reſt of the Kingdom; for the Knights of Shires might be choſen at the next County-Court, and their Names returned immediately before, or together with their Meeting at *London*. And as to the Citizens and Burgeſſes, it was yet more eaſy for them to be choſen and returned in Three Weeks Time; ſince every body knows, the Cities might have called Common Councils; and the Towns and Boroughs, by the Notice of their proper Officers, to whom the Writs were deliver'd, might have aſſembled at their uſual Places of Electing, immediately upon the Receipt of the Writs; and theſe, together with the Knights, Citizens and Burgeſſes, join'd with the Great Lords and Tenants *in Capite*, made up the *infinita Nobilium Multitudo*, mention'd by *Mat. Paris*.

But your main Objection, I confeſs, is behind; how theſe Representatives of the Commons, here called *infinita Nobilium Multitudo*, could be the Knights, Citizens and Burgeſſes; whole Number could not be, at that Time, above 500 Perſons? As for this, pray conſider, if the Difficulty will not bear as hard upon you: For if your Tenants *in Capite* made ſuch a vaſt Multitude; all thoſe Difficulties will ariſe, that you preſs me with upon my Hypotheſis, of the Meeting of all the chief Freeholders (or Lords of Manors in *England*) in Parliament, before Knights of Shires were introduced in the room of them; *viz.* How it was poſſible for ſo great a Multitude to Debate, Vote, or do any Buſineſs; and what Room, or Church, was able to hold ſo many; and the like. So that granting all your ſmaller Tenants *in Capite* (ſome of whom had but one Knight's Fee apiece) to have met there, theſe might have made a Body of Five or Six Thouſand Men; which how they could have been managed any better than Ten Thouſand, or Twenty Thouſand, (which would have more than taken in all their Feudatory Tenants too) I deſire you would reſolve me, if you can. So that at laſt, upon your own Hypotheſis, this *Populus* (the People) conſiſting of the Tenants *in Capite*, were as much Commoners, as the Knights of Shires at this Day. For as for the Word *Nobilium*, I have already proved, (and you muſt needs here

grant

grant it) that it takes in the Inferior Nobility or Gentry, under the Degree of Lords, as well as the Superior; and if so, why not all the Considerable Meise Tenants of those Tenants *in Capite*? So that you have hitherto brought no Proof, but your bare Assertion, that under this *infinita Multitudo Nobilium & Populus*, must be understood only the Great Lords, and Tenants *in Capite*; since either this Author speaks hyperbolically, or else all the Chief Gentry of England, of whatsoever Tenure, might have as well appeared at this Great and Extraordinary Assembly.

So that you are under this *Dilemma*; either this *Curia* (which you confess met *ex more*) was the Great Council of the Kingdom, or it was not: If it was not, then there was some other Greater Council besides that; but if it was, then it will plainly follow, (tho' you do all you can to mince the Matter) that this Great Council of the Kingdom, or Parliament, met of course by ancient Custom Three times in the Year, without any Summons at all from the King: Which if I should have affirmed, you would have called it a Commonwealth Notion; since nothing can be a greater Proof, that this Assembly of the whole Nation in Parliament, did not, upon your Hypothesis, immediately depend on the King's Writs of Summons, for their Assembling and Acting when met.

M. Well, since you can bring no direct Proof, that these were any other besides the Tenants *in Capite*, who met at this Great Council; I have still more Reason to suppose them to have been so, than you can have for the contrary Opinion; therefore pray give me (if you can) some clearer and later Proofs, for this Difference between the Two Councils.

P. I shall comply with your Desires; and, in order to it, shall conclude with Two or Three of those very Authorities the Doctor has given us in his Answer to Mr. P. Where he gives us this Passage out of *Mat. Paris*, in the 28th of Henry III. (which plainly proves the Tenants *in Capite* not to have been the common University, or sole Representative of the whole Kingdom;) pray read it: *Eodem Anno convenerunt regia summonitione, convocati Londoniam, Magnates totius Regni, Archiepiscopi Episcopi, Abbates, Priores Comites & Barones; in quo Consilio petiit Rex ore proprio, in presentia Magnatum, (i. e. of all the Parties above mentioned) in Refectorio Westmonasteriensis, Auxilium fieri pecuniare, cui fuit responsum quod super hoc tractarent: Recedentesque Magnates de Refectorio, convenerunt Archiepiscopi, & Episcopi, Abbates & Priores, seorsim per se superque hoc diligenter tractaturi, tandem requisiti fuerunt ex parte eorum, Comites & Barones, si vellent illis unanimiter consentire in responsione & provisione super his facienda; qui responderunt, (scilicet Comites & Barones) quod sine Communi Universitate nihil facerent; tunc de communi assensu electi fuerunt ex parte Cleri, Electus Cant. &c.* B. A. P.
Fol. 639.
A. D. 1244.

Now I think, here is as manifest a Distinction as need to be between the Lords and Commons, as Members of the Great Council, and the Common University of the whole Kingdom: For it is obvious, that when all the Lay-Lords, Earls and Barons (to whom you may also add your Tenants *in Capite*, if you please) being met together, were asked by the Bishops, Abbots and Priors then present, Whether they would agree with them, or not? The Earls and Barons answered for themselves, That they would do nothing without the *Common University*; which could not possibly be only the Lords Spiritual and Temporal, and Tenants *in Capite*, since they were now all here, and referred themselves to another distinct Order of Men, different from themselves, (who were not there present) as also from the Bishops, Abbots and Priors, who demanded their Consents to what they had agreed upon. Now if the Temporal Lords, and Tenants *in Capite*, had concurred; here had been the Consent of the *Common University* of Lords, and Tenants *in Capite*. But besides the Consent of all these, there was, notwithstanding, (it seems) required the Consent of another Body of Men, called here the *Communis Universitas*; by which must be meant the *Commons*, or no body, since otherwise they might have all agreed together without any more ado. J. A. A.
p. 207, 208.

M. I confess, this Story out of *Mat. Paris* looks somewhat plausible at the first on your side; but I doubt not, if it be better consider'd, it will do you little Service: For what if by this *Common University*, is to be understood the whole Body of Lesser Tenants *in Capite*; who not sitting with the Lords at

that Time; they would do nothing without their Consents, till it was proposed to them. But that they did afterwards all agree; Pray read the rest of this Narration, and it will make it clear enough, that this *Common University of Tenants in Capite* did also agree with the Lords, Bishops, and Abbots: The Words immediately following in *Mat. Paris*, are these: *Tunc de communi assensu electi fuerunt ex parte Cleri, Electus Cantuariensis, Wintoniensis, Lincolniensis, & Wigorniensis Episcopi ex parte Laicorum, Richardus Comes Frater Domini Regis, Comes Bigod, Comes Legr. S. de Monteforti, & Comes Marescallus ex parte vero Baronum Richardus de Montfichet & Johannes de Baliol, & de Sancto Edmundo, & Ramefeia Abbates; ut quod isti duodecim providerent in communi recitaretur, nec aliqua forma Domino Regi ostenderetur Autoritate duodecim nisi omnium communis assensus interveniret.* From which last Passage it appears plain to me, that in this Parliament the several Orders of Men that were the constituent Parts of it, were only the Bishops, Abbots, Priors, Earls, and Barons: And that all these put together were termed the *Common University*, which is more comprehensive than University simply taken. Now if the Commons, as at this Day represented had been there, we must have had some Mention of them one way or other; as well as of the Committees of the other Orders which made up the general Committee of Twelve; so that it is plain beyond doubt, that the Commons were not part of the *Common University*.

F. Then pray tell me who they were; for the Historian tells, that when all these Bishops, Abbots, Priors, had now met together, with the Earls and Barons; yet these last tell them, that without the *Common University* they could do nothing; which had been Nonsense, if, as your Doctor supposes, the whole University or Community of the Kingdom had been all present.

M. I must confess this is a material Objection; but what if to help him out, I should tell you, that by the *Common University* here mentioned, is to be understood the Body of the Inferior Tenants *in Capite*, under the Degree of Barons; and this *Common University of Tenants in Capite* might not have been present, and sat with the Earls and Barons at that Time, when the Bishops and Abbots made this Proposal: Therefore the Lords might very well answer, That till they had consulted the *Common University*, or Body of Tenants *in Capite*, they could do nothing. And though this Body of Tenants *in Capite* did not then actually sit with the Earls and Barons; yet doth it not follow that they made a distinct Estate by themselves, different from that of the Lords or greater Tenants *in Capite*: For then the Archbishops, Bishops, Abbots, &c. (who are here expressly said to have consulted by themselves,) must have done so likewise: Therefore, though our Author is not so particular as he might have been; yet certainly this *Common University* were thereupon consulted, and gave their Assents to the Choice of this Committee of Twelve, who were to draw up their Answer to the King: For the Words are, *Tunc ex communi assensu electi fuerunt*; which seem to refer to the *Common University* or Body of Tenants *in Capite*; or else the Lords Excuse, as well as the Election of these Persons by the Bishops, Earls, &c. had been very insignificant.

F. This seems to me to be a precarious Assertion, and without any due Proof; for tho' the Words are *Tunc ex Communi Assensu*, yet I very much doubt whether these Words do refer to the *Common University of the whole Kingdom* or not. For you your self confess, that *Mat. Paris is short in this Point*; and that it was not so, seems more likely to me by this material Circumstance, that not one Person of the Twelve but was either a Bishop, Earl, or Great Baron. (For that *Richard de Montfichet*, and *John de Baliol* were so, Sir William Dugdale hath proved in his *Baronage of England*;) Whereas, if the University or Body of the Tenants *in Capite* had joined in this Election; it is not likely but they would have Chosen some of their own Body to represent them in this Committee, who were not Earls or Barons. Since your self must confess, that there then were a great Body of Men who were not Lords, nor did at this Time sit or Act jointly with the Lords, or greater Barons in this Assembly. And likewise it farther seems highly probable, that this *Common University of Tenants in Capite* (take it in your Sense) did not give any Resolution in this Matter; since we do not find any Money given in Answer to the King's Request, but only

Complaints

Complaints of, and Orders about Redressing of Grievances; which was in those Days often done in a Great Council of the Bishops, Lords, and Tenants *in Capite*.

But I shall shew you now by some other Records which the Doctor him-^{self} hath made use of, that there often was a distinct Assembly or Council of the Lords and Tenants *in Capite*, different from that of the Commons or Commonalty of the whole Kingdom. The first Record is to be found among the Parent Rolls of the 42 Henry III. beginning thus; *Rex omnibus, &c. cum negotiis nostris arduis, nos & Regnum nostrum contingentibus, Proceres, & Fideles Regni nostri ad nos London. In Quindeni Pasche proxima preterita faceremus convocari, & cum de Negotiis supra dictis & maxime de projectione Negotii Sicilie diligenter cum iisdem tractaremus, ac ut si nobis responderant quod si statum Regni nostri, per Concilium Fidelium Nostrorum ratificandam duxerimas, & Dominus Papa Conditiones circa factum Sicilie appositas melioraverit, per quod Negotium illud prosequi possemus cum effectu, ipsi diligentiam fideliter apponent erga Communitatem Regni nostri quod nobis Commune Auxilium ad hoc prestetur, &c.* The rest I shall not trouble you with, because it is not to our present purpose.

But you may here see, that taking the Words *Proceres* and *Fideles* in your own Sense, the former for the Bishops and Lords, &c. and the latter for the Tenants *in Capite*, who were called to consult about the Business of Sicily (which Kingdom the King had before too rashly accepted of from the Pope :) Yet tho' they were all met, they could do nothing but give him Advice, and could give him no *Commune Auxilium*, i. e. common Aids or Subsidies, without the Consent of the Commonalty of the Kingdom. Now what can this Community signify but the Commons; for your Lords and Tenants *in Capite* were all met already, and if they alone made up the *Common University* or Body of the Kingdom (as you suppose,) why could they not have immediately granted the King the Assistance he desired (if they had a sufficient Power so to do,) without putting him off with a Promise, that they would use their endeavour with the Community of the Kingdom, (as a distinct Order or *Body of Men*;) that this Aid or Subsidy should be given him: And upon this Condition it is, that at the end of this Record, the King promises them, that before *Christmas*, he would mend the State of the Kingdom, *per Consilium Proborum & Fidelium Hominum nostrorum*, which can mean nothing less than a Parliament. Which the next Record in the same Roll recites, was to meet at *Oxford* after the Feast of *Pentecost*. Which Record, since it not only recites the King's Oath, whereby he had bound himself to observe the Direction of a Committee of 24 *Fideles*, i. e. Faithful or Loyal Men, Twelve of which were to be chosen out of the King's Council, and the other Twelve by the *Proceres* or *Magnates Regni*, as I have already proved, may take in the Commons as well as the Lords. But whether by these Words were meant the Lords or Commons, the Conclusion of this Record sufficiently confirms my Argument from the precedent Record, that the Lords and Tenants *in Capite*, could not then Tax the whole Kingdom at their Pleasure, without the Consent of the Commons: Or else to what purpose are these Words in the Conclusion of this last Record; *Promiserunt etiam nobis Comites, & Barones Memorati, quod expletis Negotiis superius tactis, bona fide laborabunt ad hoc quod Auxilium nobis Commune prestetur à Communitate Regni nostri in cuius rei, &c. Dat. 2 die Maij.* And it appears by the Date, as also by the Entry on the Roll, that both these Records were perfected at once, and concerning the same Business. And further, to prove that the Parties appointed in the Record to be chosen *ex parte Procerum*, were not chosen by the Great Lords, or Peers only, may be seen from a Patent Roll of the same 42 Henry III. whereby *Henry de Wengham*,^{M. 5.} Dean of *St. Martin le Grand*, and then Keeper of the Great Seal; and *John Mansel*, Provost of *Beverlay*, were two of the said Commissioners; tho' they were neither Barons nor Tenants *in Capite* (as I know of) but only Eminent Lawyers, and Men of Great Abilities (and so meer Commoners.) Yet *Mat. Westminter* calls these Men *Proceres*, as you may see by this Passage, speaking of this whole Committee, *Videntes ergo Proceres antedicti viginti quatuor, ad Regis & Regni regimen sic Elesti, &c.*

F. l. 1. 9.

I shall now only conclude with a *French* Record, which the Doctor himself hath also given us at large, and which refers to the said Committee of 24 above-mentioned: It begins thus, *Henry par la Grace de Dieu Roy d'Engleterre, &c. a touz ceus, &c. Sachiez ce pur le profit de nostre Reaume é a la Requeste de nos hanz Homes é Prodes Homes, é du Commun de nostre Reaume Orreyames ce vint quatre Homes eussent poer, perque tout ce quil ordeneirent dei Eslat de nostre Reaume fust ferm estable*; the rest being very long, you may read at your Leisure; only I shall take Notice of the date of this Letter, to which the King also put to his Seal: The Conclusion being thus; *Ceste chose feu feite a Lundre landemaigne prochain apres la Gaule haut l' an de nostre corronement quarente secunde*. And tho' the Doctor can make nothing of the Words *Gaule haut*; this happened, I suppose, either from the bad Writing of the Record, or from the Ignorance or Mistake of the Transcriber; for it should be *Gaule de Aut*, that is, the *Gale of August*; which is a great Holiday in the Church of *Rome* upon the First of *August*, (called also *St. Petri ad Vincula*) in the Memory of *St. Peter's* Chains curing of a *Roman* Virgin by her Kissing them.

Ibid.

Vi. Spel. Glo.
Tit. Gula Augusti.

I shall farther observe from this Record, that the *Hanz* or *Prodes Homes* mentioned in this Record, being taken in the Doctor's own Sense for *High* and *Wise Men*, that is, the *Earls*, and *Barons*; yet the Words *é du Commune* that immediately follow them, must needs signify some Body of Men different from the former; or else it had been a notorious piece of Nonsense; since if the former Words had taken in all the *Lords* and *Tenants in Capite*, that is (in your Sense) the whole Community of the Kingdom; to what purpose are these Words *é du Commune*, that are immediately subjoined? since the *hanz* & *Prodes Homes* would have served to express all the *Lords* and *Tenants in Capite*, whether taken as *Great* or as *Wise Men*.

M. I confess what you have now said would carry some weight with it, were I not very well satisfied, that you impose upon your self, by taking (as I told you at our last Meeting) these Words *Communitas*, *le Commune*, & *Communaliti* in a wrong Sense, for the Commons as they are now; when indeed these Words before the 49th of *Henry III.* nay the 18th of *Edward I.* (as the Learned Doctor shews us in his 2^d Edition against *Mr. P.*) are always to be understood, either of the whole Representative Body of the Kingdom in general, consisting of the *Bishops*, *Abbots*, *Earls*, and *Barons*, together with all the *Tenants in Capite*, called by *Mat. Paris* and other Historians, *Communitas Baronagij*; or else for the Community of the *Tenants in Capite* alone, stiled *Communitas Regni* in our Ancient Records. And this I think I can prove to you by undoubted Testimonies; but since you are now upon the proving Part, pray shew me that these Words I now mentioned did ever signify the Commons of *England* in the Sense they are now taken, before the Times we insist on. And I have the more Reason to desire this from you, because it is chiefly from the mistaken Application of these Words, that the Gentlemen of your Opinion have imposed their false Notions upon the World.

F. I shall undertake what you desire; and I hope if I cannot satisfy you, the Fault will not lie in my Authorities, but your Prejudices against them. In the first Place, therefore, let me mind you, how far you and I agreed at our last Meeting, when I granted you that these Words *Communitas*, *la Commune*, & *la Communalité*, now in Dispute, were very Equivocal, and were often taken in different Senses; as sometimes, you say true, for the whole Representative Body of the Kingdom; sometimes for the Community of the *Barons*, and sometimes for the Community of the *Bishops* and *Clergy*; but never as I know of for the Community of the *Bishops*, *Lords*, and *Tenants in Capite*, much less for the Body of *Tenants in Capite* alone; nor were you then able to prove to me, that these Words must necessarily be understood in your Sense, for the Community of the *Tenants in Capite*. And tho' you should prove them sometimes to be taken in that Sense, yet would it rather make against, than for your Opinion; since they must still signify a different Body of Men from your great *Lords*, and consequently as meer *Commoners* as your *Knights of Shires* at this Day; which is against your first general Assertion, that by these Words are always understood the Community of the *Baronage* only.

But

But to come to my Proofs (which I shall divide in Two Parts;) First, I will prove that these Words *Communitas*, *le Commune*, and *Communalty*, when coming immediately after *Comites & Barones*, or Counts and Barons, or *Proceres*, in our old Statutes and Records, do always signify the Commons in the same Sense in which they are now taken: And for Proof of this, I will begin with the Reign of *Henry III.* when these Words came first to be generally in Use, and so descend to his Successors as low as *Richard II.* And if I can shew you, that these Words (so put) always signify the Commons, as well before, as after that Time; I think you have Reason to be satisfied, that there was never once upon a Time such a strange Alteration in the constituent Parts of our great Councils, as you supposed; and yet none of our Ancient Historians or Statutes should ever take any Notice of it, till these modern Antiquaries took upon them to disperse these Clouds.

To begin first with the Words *le Commune*; pray remember the Patent Roll of the 48th of *Henry III.* which I mentioned at our last Meeting, viz. the Form of the Peace between this King, the Prince his Son, and the whole Body of the Kingdom Assembled in Parliament; the Title of which is thus: *Hec est forma pacis à Dom. Rege, & Dom. Edw. Filio suo, Praeatis, Proceribus omnibus cum Communitate tota Regni anglie communiter, & concorditer approbata.* Now pray what can these Words *Communitate tota* here signify, but another Body of Men distinct from the Earls and Barons, or else it would be a gross Tautology.

P. R. C. Rot.
Pat. 48 H. 3.
M. 5.
B. A. P.

And pray compare this Form of the Peace now mentioned, with the Writs of Summons of the 49th of this King (when your Doctor grants the Commons were Summoned to Parliament after the same Manner as they are now) and see if there be any Change in the Terms; and for Proof of this, we need go no further than the very Writ of Expences (for the Wages of the Knights of Shires, which the Doctor himself has given us at large in his Answer to Mr. P.) it is the 49th of *Hen. III.* to the Sheriff of *Yorkshire*, wherein, after other Recitals, it follows thus, *Cumque Communitates Comitatum dictorum varias hoc Anno, fecerint prestationes ad defensionem Regni nostri, &c.* He therefore commands the said Sheriff, *quod duobus militibus qui pro Communitate dicti Comitatus praesato Parlamento interfuerunt, &c.* should be paid their reasonable Expences, *De Communitate Comitatus praedicti*: For going to, and staying at, and returning from the said Parliament, &c. From whence it appears, that the Word *Communitas* and *Communitates* in this Writ, cannot signify the Community of Tenants *in Capite* alone, but the Commons of the County in general; unless you can prove to me that none but Tenants *in Capite* had performed these *varias prestationes* in the Writ, and that none but they then contributed to these Expences of the Knights of Shires; otherwise these Words must plainly signify the Commons in general, as they did in the like Writ of the 28th of King *Edward I.* which I shall give you by and by. But I shall first shew you a few other Records of this King's Reign, concerning the Word *la Commune* (which Mr. P. has given us); they are in the Patent Roll of the 51st of this King, wherein by the Counsel and Assent of the King of the *Romans, & des Counts, & des Barones, & la Commune de la Terre*, He pardons the Earl of Gloucester, and all his Company: So likewise in the same Roll, the King, by the Counsel and Assent of the said Counts, and Barons, & de *la Commune de la Terre*, Pardons the City of London, all manner of Rancor and ill Will.

Rot. Cl. 49. H.
3. M. 10. dorso.

P. R. C. Rot.
Pat. 51. H. 3.
M. 15.

Now pray tell me a Reason, why should not the Word *la Commune* in these Acts of Pardon, signify the same Thing as the Word *Communitas* in the Form of the Peace, and in the Writ of Expences of the 49th now cited? Since they come immediately after the Counts and Barons, and so must needs signify a Body of Men distinct from them. For there is the same Reason, why the Words *la Commune de la Terre*, should here signify the Commons of the Land; as that the Word *Communitates Comitatus*, should signify the Community or Commons of the whole County.

M. Will you give me leave to answer this Question presently, because I confess it is very material, before you proceed farther? There may (in my Opinion) very good Reasons be given, 1. Why the Words *Communitas & la*

Commune,

Commune, may signify the Community of the Tenants *in Capite*, in the Form of the Peace, and Acts of Pardon; and yet signify the Commons of the County in general, in the Writ for Expences you have now mentioned: As First, Because the Subject Matter is different in the Form of the Peace, and Acts of Pardon, from that in the Writs of Expences; the one being the *Communitas Regni*, and the other *Communitas Comitatus* only, called also in the Plural Number, *Communitates Comitatum*; and then I grant when thus used, it always signifies the Commons in general. And there may be likewise a sufficient Reason given, why this great Change might have been made in the constituent Parts of our great Councils, and yet no change of Phrases or Expressions might be made in our Records and Statutes, nor any Notice taken of it by our Historians; which is, because the first Knights of Shires, being chosen out of, and by the Tenants *in Capite* only; the Change was imperceivable at first, there being still Men of the same Order, appearing in Parliament, for the whole Body of those Tenants; the Difference being only in the Number, *viz.* Two, for a whole County; whereas before, all the Chief Tenants *in Capite* came in Person. And I am the more inclined to be of this Opinion, because in this Writ of Expences of the 49th of *Henry III.* (which you have now cited) there is no such Clause as is in the following Writs of like Nature, *prout in casu consimili fieri consuevit*; which shews it to have been a new Thing for the Knights of Shires to have their Expences allowed them, that being the first Time of their Meeting in Parliament.

E. I confess what you say is very plausible, were there any Colour of a Proof brought by you for it; but I shall shew you further, that your Distinction between the *Communitas Regni*, and the *Communitas Comitatus*, signifies nothing, unless you can prove that this *Communitas Regni* was not the Representative of the *Communitates Comitatum* mentioned in this Writ, and did not consist of Persons of the same Degree or Order; for the Writ of Summons of the 49th of *Henry III.* says no more than that these Knights should be *de legalioribus & peritioribus militibus comitatus*, without limiting them to Tenants *in Capite*. But as for your Reason, why these great Alterations might be made in our great Councils or Parliaments, without any Notice taken of it, it is altogether precarious; for you have not yet, nor can, I believe, give me any sufficient Authority (besides the Doctor's bare Assertion) that ever none but Tenants *in Capite* were capable of being Elected Knights of Shires, or that none but such Tenants by Military Service were the Electors.

Vid. Dial. 6th.

And I think I have sufficiently confuted the Vanity of that Assertion at our last Meeting, when I shewed you the false Interpretations you gave of those Statutes of the 7th of *Henry IV.* and 10th of *Henry VI.* whereby you would have proved, that there was some Alteration thereby made, as to the Electors of the Knights of Shires at the County Court: Whereas, indeed, before those Statutes, all Persons of whatsoever Tenure, and of howsoever small an Estate of Freehold, who owed Suit and Service to the County Court, were capable of being Electors; and consequently of choosing whom they pleased, as well Tenants *in Capite*, as others, to be Knights of the Shire; and that those who were not such Tenants were frequently chosen, in the Reigns of *Edward the Third*, and *Richard the Second*, I could bring sufficient Proofs, were it worth while to insist upon a Thing so certain.

But I shall go on to prove that the same Words, *viz.* *Communitas le Commune*, or *la Communalte*, were used in most of our Statutes and Records, to signify the Commons. I come therefore to the Reign of *Edward the First*, and I pray, in the first Place, remember, what I took Notice of at our last Meeting concerning the Statute of *Westminster the First*, made in the Third Year of this King, beginning thus in *French*, *per L'assentement des Archevques, Evescques, Abbes, Priors, Counts, Barons, & tout la Communalte de la Terre, Illoques Summones*.

See the Old French Statutes in Tottle.

Now every one knows that *Communalte* is but *French* for the *Latin Communitas*, as appears by the first Writs we have left us (except that of the 49th of *Henry the Third*, now mentioned) *de expensis Militum*, being of the 28th of this King, directed to the Sheriff of *Somersetshire*, to levy the Expences of the Knights for that County (who had served in the last Parliament) *de Communitate*

Test. Clau.
28th of Ed. 1.
m. 12. d. 10.

munitate Comitatus prædicti; i. e. of the Commons of the said County in general. The same Clause is also in the Writs which were then issued for the Expences of the Citizens and Burgeses who served in this Parliament; which were also to be levied *de Communitate Civitatis vel Burgi*, which sure must mean the Commonalty, or Commons of all those Cities and Boroughs there mentioned; for the Record is, *Eodem modo scribitur Majoribus, & Ballivis pro Burgenfibus Subscriptis*: And which is also more remarkable, these Writs contain this Clause, that the said Knights and Burgeses should have their Expences allowed, *pro veniendo, manendo, & redeundo a Parlamento prædicto prout alias in Casu consimili fieri consuevit*; which Words relating to a former Custom, not then newly begun (is this Word *consuevit* in a legal Sense still imports) must needs relate to some Time much more ancient than the 49th of Henry the Third, or the 18th of this King; the former of which was but 26, and the latter but 10 Years before this 28th of Edward the First; in which Time there was not above Thirty Parliaments called, if so many.

Vol. 4th Part
of Mr. Prynne's
Parliament Re-
gisler, p. 9.

And further, that the Word *Commonalty* signified the Body of the Commons, and not Tenants *in Capite* in the Reign of this King, appears by the Statute or Ordinance (tho' the Year is uncertain) entituled, *Consuetudines Cantie*, which you may see in French in Tottles Collection; the Title of them is thus, *Ceux sont les usages les queux la Communalte de Kent Clayment avoir en Tenements de Gavel-Kind*. Now every body who knows any thing of *Gavel-Kind*, knows also it was generally a Soccage Tenure, there being but little of it held by Knight's Service, and consequently the Owners of such Lands who were then the greatest Part of that County, are here called *la Communalte de Kent*.

So likewise in the Reign of Edward the Second, the same Words are used in the same Sense; as in the Statute of Pardon for the Death of Pierce Gaveston made in the Seventh of this King; which is granted *per nous* (i. e. the King himself) *per Archievesques, Evessques, Abbes, Priors, Counts, Barones, & la Communalte de nostre Roiaume illoques assemblez*.

See Tottles
Collection.

So also in the Latin Records, as appears by an Act of Pardon granted by Parliament, in the 12th Year of this King: *Consentientibus Prelatis, & Proceribus, & Communitate Regni*. So likewise the Statute of York of the same Year, writ in French, is recited to have been made *per Assent des Prelates, Counts, Barons, & la Commune du Roialme illoques assemblez*. Where you see that the Latin Word *Communitas*, and the French *le Commune* signify the same Order of Men.

Rot. Parl. 12.
Ed. 2. m. 17.

Tottles's Stat.
P. 95.

In the Reign of Edward the Third, I can give you many remarkable Examples of the same Words in the Parliament Roll. In the first of this King, Andrew de Hartford, a principal Citizen of London, was *de Assensu Prelatorum, Comitum, & totius Communitatis Regni*, pardoned all Homicides; which was a Pardon by Act of Parliament. The very like Words are also used in the same Roll in the Act of Pardon granted to the City of London.

M. 8.

M. 29.

I could Instance in many more, but I shall only trouble you with one more in this King's Reign (it is so remarkable I cannot omit it) of the 34th of this King, and is to be found in the old Edition of Statutes printed in French; the Title begins thus, *Ceux sont les Choses, queux nostre Seigneur le Roy, Prelats, Seigneurs & la Commune ont ordeines & estables*.

To conclude with the Reign of King Richard the Second, the like Expression is found in the Parliament Roll of the 5th of Richard the Second, where the Statute begins thus: *Per Commune profit du Roialme d'Angleterre eient faites per nostre Seigneur le Roy, Prelats, Seigneurs, & la Commune de le Roialme esleantes en cest Parliament*. From the Titles to which Two last Statutes, I pray observe that the Word *la Commune*, is not only used for the Commons in the same Sense as it was in the former King's Reigns; but also that these Statutes were made by the joint Assents of the King, Lords and Commons. So likewise in the same Roll are recited, *Concordie, sive Ordinationes facte de Communi Assensu Regis Procerum, & Magnatum, & Communitatis Regni Anglie*; which I give you, to shew that the Words *Communitas* & *le Commune*, always signify the same Thing in our Statutes and Records, viz. The Commons as now understood, different from your great Lords and Tenants; and if they are to be taken in this Sense after the 18th of Edward the First, I would be glad if you could shew me any sufficient Reason, why they should not be so under-

M. 21.

derstood

derstood all along before that Time, as well as in the 49th of Henry the Third only.

M. Tho' I grant that these Words you mention are to be understood for the Commons, as now taken, in many Records and Acts of Parliament, after the 18th of Edward the First; (and therefore you need not to have taken the Pains to have gone beyond that Time) yet notwithstanding, I think I can prove to you by very good Authorities, that the Word *Communitas*, (which I grant is the same Thing with *le Commune* in French) when put after the Words *Comites & Barones*, does not signify the Commons of England in general, but the Community of the Tenants *in Capite* alone, or at least the Community of all Tenants by Military Service; and that as low as the Reign of Edward the Third. But for Proof of this, I pray peruse this Writ, which the Doctor hath given us in his Answer to Mr. P. *Rex Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Militibus, & omnibus aliis de Comitatu Cantie, Salutem. Sciatis quod cum primo die Junij, Anno Regni nostri decimo octavo, Prelati, Comites, Barones, & ceteri Magnates de Regno nostro concorditer, pro se, & pro tota Communitate ejusdem Regni, in pleno Parlamento nostro, nobis concesserunt quadraginta Solidos, de singulis Feodis Militum, in dicto Regno in Auxilium ad primogenitam Filiam nostram Maritandam. &c. Cujus quidem Auxilij levationi faciendæ, pro dictæ Communitatis assimento hujusque supersedimus gratiosè, &c.* By this Record it is clear, that such as paid Scutage, that is, Forty Shillings for a Knight's Fee, were then the *tota Regni Communitas*, and no others: And of these the Tenants *in Capite* granted and paid it first for themselves and Tenants; and then their Tenants in Military Service, by virtue of the King's Precept, paid it to them again for so many Fees as they held of them; so that this Tax being raised wholly upon Knights Fees, must be granted only by those that held by Knights-Service.

But further: That the *Communalte de Royaume*, the Community of the Kingdom, as represented by the Tenants *in Capite*, did still to continue as above-mentioned, till almost the Middle of King Edward the Third's Reign, is as clearly proved by another Record of that King: *Rex dilectis & fidelibus suis Vicecomiti Wigornie, Thome Bottiler de Upton super Sabrinam, Militi; & Thome Cassy de Wych, Salutem: Sciatis quod cum in pleno Parlamento nostro apud Westmonasterium, ad diem Lune proximo post Festum Nativitatis Beate Marie Virginis proximo præteritum tento, Prelati, Comites, Barones, & ceteri Magnates de Regno nostro Angliæ, &c. pro se, & tota Communitate ejusdem Regni, nobis concesserunt quadraginta Solidos, de singulis Feodis Militum, in dicto Regno Angliæ, &c.* So that the whole Community of England, in this Record, were Military Men, such as held Knights Fees, or Parts of Knights Fees, and such as paid Scutage; and they were neither the ordinary Freemen or Freeholders, nor the Multitude or Rabble.

F. I pray, Sir, give me Leave to answer your Arguments from these Records as you put them, lest I forget what you have said. In the first place, as to this Record of the 30th of Edward the First, which relates to a Tax given in the 18th Year of his Reign; and recites an Aid of 40 s. upon every Knight's Fee through the whole Kingdom, to have been given by the Bishops, Earls, Barons, and other *Magnates*, (or Great Men of the Kingdom) in full Parliament, for themselves and the whole Community, to Marry the King's Daughter; and which Subsidy he had deferred to Levy till now: And therefore, because this was a Tax granted only upon Knights Fees, that those only who pay'd this Scutage, were then the *Communitas*, or whole Body of the Kingdom, which is no Argument at all, since from this we may plainly collect the clean contrary. For if none had been to pay to this Tax, but those that held by Knights-Service *in Capite*, then the King would have had no need to have had it granted in Parliament; since by the 14th Article of King John's Charter, he might have Taxed his Tenants *in Capite* for the Knighting of his Eldest Son, and the Marriage of his Eldest Daughter, without the Assent of the Common Council of the Kingdom: And according to your Hypothesis, and the Authorities you have brought to prove it, these Tenants *in Capite* might also, by the like Reason, have made their Tenants by Knight-Service have contributed to this Tax; which yet you see they could not do without the Consent of Parlia-

Parlia-

B. G. p. 32, 33.
Rot. Pat. 30.
Ed. I. m. 1.

Rot. Fin. 20.
Ed. III. m. 7.
See it at large,
B. G. p. 37.

Parliament : And therefore this Aid (or Subsidy) being granted in Parliament, must needs extend to all the Lands in the whole Kingdom, as well those that held by Knight's-Service, as well as those that did not ; for it is not here said, as in the Writ to the Sheriff of *Sussex*, *qui de nobis tenent in Capite* ; and then the Words *pro se, & tota Communitate Regni*, cannot mean (as you would have them) *viz.* That the Lords, and Tenants *in Capite*, had granted it for themselves, and the Community of their Tenants by Military Service only, who (say you) represented the whole Community of the Kingdom ; for then (as I have already observed) this needed not to have been granted in Parliament at all. For at this rate, no Tenants of those Abbeys and Monasteries, (which were a great many) who did not hold *in Capite*, would have paid any thing to this Tax ; nor yet the King's Tenants, who did not hold *in Capite*, but of some Castle, or Honour : Nor lastly, any Tenants in Soccage, who were very numerous in *Kent*, as well as in other Counties ; (as Mr. Taylor proves in his History of *Gavel-Kind*.) So that if your Tenants *in Capite*, and other Under-Tenants by Military Service, had been then the Community of the whole Kingdom ; this Community had not consisted of above one Half, or at most a Third Part of the Kingdom.

But in my Sense of this Word *Communitas*, here will be no Difficulty at all ; for these *Magnates*, mention'd in this Record, being taken (as I have proved they often are) for Knights of Shires, then these Words are thus to be understood ; *viz.* That all the Parties mention'd in this Record, gave for themselves, and the whole Community of the Kingdom, consisting of all the Freeholders of *England*, who all contributed to the Marriage of the King's Daughter, according to their respective Estates. And tho' the Sense of this Word had been otherwise in this place, yet it would not have contradicted my Sense of the Word *Communitas*, which I do not say always signifies the *Commons*, only when it comes immediately after the Words *Comites & Barones* ; as it does not in this Record you have now cited.

M. But pray tell me how this could be ; since the Record says expressly, that this Aid was to be Raised by 40 s. upon every Knight's Fee ; which could only extend to Tenants by Knights-Service : Nor could this Word *Communitas* here signify the *Commons*, as now understood ; since the Citizens and Burgeesses are not at all mention'd, who (you know) do at this Day make up the greatest Part of the Representatives of the *Commons of England*.

F. This proceeds from your not knowing, or else not considering, the Ancient Manner of reckoning Estates, (and consequently of Taxing by Knights Fees) not only Lands held by Military, but Soccage-Tenure also ; as appears by those Writs of the 24th and 26th of *Henry the Third*, as they are still upon the Close-Rolls ; being both almost the same, word for word, which I gave you at our last Meeting ; yet since you may have forgot them, pray read them again. *Rex Vicecomiti Northampton. Salutem : Precipimus tibi, quod per totam Ballivam tuam, in singulis bonis Villis, & similiter in pleno Comitatu tuo, clamari facies, Quod omnes illi de Comitatu tuo, qui tenent Feodum Militis integrum, vel etiam minus, quam Feodum integrum, dum tamen de Tenemento suo, tam Militari quam de Soccagio, possint sustentari ; & Milites non sunt, sicut Tenementa sua diligunt citra Festum omnium Sanctorum, Anno Regni Nostri. XXV. Arma capiant, & se Milites fieri faciant.*

24. H. III.
m. 8. dorso.
26. H. III.
Part 1. m. 6.
dorso.
Tit. de Militibus faciendis.

Where you may note, that all Men, who held the Value of a Knight's Fee, either by Military, or Soccage-Tenure, were liable to be made Knights, provided they could maintain themselves of their Estates ; which could never have been, had not the Custom of Reckoning and Taxing Estates of all sorts, as well by Knights Service, as otherwise, according to the Value of so many Knights Fees, (that is, at 20 l. per Annum) been then commonly used. But as for your next Objection, that the Citizens and Burgeesses are not mention'd in this Record, and so could not be comprehended under the Words *Communitas Regni* ; this proves no more than that which will easily be granted you ; that this Word *Communitas*, used in your Record, is there to be understood restrictively, and according to the Subject-Matter ; *viz.* the Community of Freeholders, or Land-Holders of the whole Kingdom only ; since this Tax being wholly upon Lands, the *Commons of Cities and Boroughs*, then called *Communitates Civitatum, & Burgorum*, whose Estates lay in Money or Goods, could not be Taxed by Knights Fees ;

Fees; nor do I doubt but that if the Records of that Parliament of the 18th of *Edward I.* were now extant (which are lost) it would appear, that they also contributed to this Tax, according to their Estates, as they did in the 34th Year of this King, to make the King's Eldest Son a Knight. And as for your other Record of the 20th of *Edward the Third*, since it is but the same in Effect with this of the 30th of *Edward the First*, the same Answer will serve for both; only I cannot but observe, that whereas you have often asserted that this Word *Communitas*, did only signify the Community of Tenants *in Capite*, now you fall a Peg lower, and it must at last take in the whole Community of Tenants by Knights Service, whether *in Capite*, or not, who must certainly grant this Tax, by their Representatives, the Knights of Shires, who were present at this Parliament, as appears by the Writs of Summons; now if you grant (as indeed you must) that the Word *Communitas* now signifies such inferior Military Tenants, as then served for Knights of Shires, why must not the same Word signify the like Persons before the 18th of *Edward the First*.

M. Well then, however, you grant that this Word *Communitas* does not always signify all the Commons of *England*, as you supposed; but give me leave to urge further, that it must mean the Community of the Tenants in Military Service only: Pray see this very Record of the 34th of *Edward I.* which Mr. P. has given at large in his *Appendix*; which being long, I shall trouble you with no more than what makes to our present Purpose, *viz.* That the King intending to make his Son, Prince *Edward*, a Knight, Summoned the Archbishops, Bishops, Abbots, Priors, Earls, Barons, and other great Men of the whole Kingdom, to appoint what Aid they would grant the King towards it; and then it follows thus, "That the Prelates, Earls, Barons, and others, as also the Knights of Shires, being met, treating together with Deliberation upon this Matter, considering that an Aid was due to make his Son a Knight, besides the Burthen that lay upon the King, by reason of the *Scotch War*, at length they unanimously *Domino Regni concesserunt, pro se & tota Communitate Regni tricesimam partem omnium Bonorum suorum temporalium mobilium*, for making his Son a Knight, and towards his Expences of his War in *Scotland*. And then the *Cives & Burgenses Civitatum, ac Burgorum, ac ceteri de Dominicis Regis Congregati*, treating about the Premises, and considering the Burthens lying upon the King (not mentioning any Aid for making his Son Knight, as nor holding of the King by Knights-Fee, or Service, and therefore none of the Community of the Kingdom) *Domino Regi unanimiter ob causas supra dictas concesserunt Vicefimam partem bonorum suorum mobilium*. Here the Prelates, Earls, Barons, and great Men, with the Knights of Shires, consulted together and gave for themselves, and the Community of the Kingdom, a Thirtieth Part of their Goods, and the Citizens, Burgesses, and Tenants of the King's *Demesnes* (which were likewise none of the Community of the Kingdom) gave a Twentieth Part; for if they had been of the Community, they had paid a Thirtieth Part as well as the rest; and therefore 'tis most certain that even at this Time, *viz.* the 34th of *Edward I.* they were not taken to be part of the Community of the Kingdom, and that the Tenants *in Capite*, Serjeanty, or at least the Military Men, and Tenants in Military Service were only such. This I have cited, to shew you that Anciently the Citizens and Burgesses were not then reckoned as Part of the Community of the Kingdom, and therefore the Words *Communitas*, and *le Commune*, though put after, and distinct from *Comites* and *Barones*, did not then include all the Commons of *England*, as you have very confidently asserted.

E. As to this last Record you have cited, I need give you no other Answer to it, than a like Writ of the 35th of this King, which the *Doffor* himself hath also given us in his *Glossary*; which I shall here read you at Large, together with his Learned Comment upon it; it is for the Collecting of this Twentieth and Thirtieth Part granted in the Thirty Fourth you have now mentioned; the Writ runs thus, *Militibus, liberis hominibus, & toti Communitati Comitatus Middlesex tum infra Libertates, quam extra, salutem: cum Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites, Liberi Homines, ac Communitates Comitatum Regni nostri Tricesimam omnium Bonorum suorum temporalium in Blank, Civesque & Burgenses, ac Communitates omnium Civitatum & Burgo. in ejusdem Regni, necnon Tenentes de Dominicis nostris Vicefimam Bonorum suorum mobilium, curialiter concesserunt, & grantantur, &c.*

And

And lest we should happen to mistake the Meaning of these Words, the Doctor himself has furnish'd us with this Learned Comment upon them, as follows in the same Place. "It is said in this Record, that the Archbishops, B. G. p. 34.
 "Bishops, Earls, Barons, Abbots, Priors, Knights and Freemen, and Communities of Counties, gave a Thirtieth Part of their Goods, as if they had been all Members, and sat in this Parliament. And so it is said of the Cities and Burghs, that the Citizens, Burgeses, and the Communities of the Cities and Burghs gave a Twentieth Part of their Moveables, as if they had been all there. But these Words signify no more, than that the Knights and Freemen gave by their Representatives, and that the Communities of Counties, *Clauſ. 34 Ed. I*
 "and the Citizens and Burgeses, and Communities of Cities and Burghs, gave by their Representatives, as is most clear from the Writ of Expences for the Knights of *Lincolnshire*, and so consequently for the rest. Now I desire you would tell me, whether there can be a plainer Record against the Doctor's Opinion than this; for in the first place, who were these Knights, Freemen, and Commons, who granted this 26th and 30th Part of their Moveables in the 34th Year of this King; but the Knights, Citizens and Burgeses, the Lawful Representatives of the whole Kingdom in General, as well those who held *in Capite*, or else by inferior Military Service, as those that held by any other Tenure? Or who were these Representatives, but Men chosen out of all Sorts, as well those that held by Knights Service, as those that did not; unless you can prove (as you have not done hitherto) that all the Cities and Boroughs in *England* held of the King *in Capite*; and that none but Tenants *in Capite*, or Military Service at least, were chosen either for Counties or Cities: And though I find your Doctor has an utter Aversion to the Word Commons, and therefore will needs translate the Word *Communitates*, by Communities, and not Commons; yet if you were to render these Words, *the Commons of the Counties, Cities and Boroughs*, into our Law-Latin, I desire to know what other Words you could make use of, but these in this Record, *viz. Communitates Comitatum, Civitatum & Burgorum*? So that to conclude, if in the 28th, 34th and 35th of *Edward the First*, all the Commons gave by the same Representatives as they do now, I can see no Reason why they might not do so too, Thirty or Forty (nay Threescore) Years before that Time; and pray take Notice also, that here the Tenants in Ancient *Demesne* gave likewise by themselves, and could not be charged by the Knights of Shires. And therefore, as Mr. *Lambard* in his *Archeon* very well observes, this Prescription of not being chargeable with the rest of the County, must be very Ancient, since there was no Land at that Time reckon'd as Ancient *Demesne*, which had not belong'd to the Crown before the making of *Doomsday-Book*. And if granting an Aid to the King separately from the rest of the Kingdom, were sufficient to constitute the Grantors a distinct Estate, then the Tenants in Ancient *Demesne* were no Part of the Commons of the Kingdom by the same Rule.

M. I must confess, what you have now said concerning the constant Use of the Words *Communitas*, and *le Commune* (coming after *Comites* and *Barones*) to express the Commons in Parliament in our Statutes and Records, would weigh much with me, had I not good Reason to believe there were no such Thing as Commons in Parliament, in the Sense now taken, before the 49th of *Henry the Third*; and from which Time I suppose it was discontinued till the 18th of *Edward the First*; for which I can give you very good Proofs: But in the mean time pray shew me by any Record, or Statute, that there were any Knights, Citizens and Burgeses Summoned to Parliament till the Times I allow. For in the first Place, you cannot shew me any Mention of Commons in the Plural Number, in any old Statute before *Edward the First's* Time; and as for the Words *Communitas* and *le Commune*, which I grant was often used to express the Commons after that Time, your self own they are equivocal; and therefore when put after the Earls and Barons in the Instances you have given, may signify the Community of the smaller Tenants *in Capite*, which were the only Representatives of the Commons that appeared in Parliament in those Days; and I am the more inclined to be of this Opinion, because I have searched the old Statutes very exactly, and cannot find any Mention of the Word *Commons* in the Plural, much less of Knights, Citizens, or Burgeses, till the Statute of the 34th of *Edward the First*, *de Tallagio non concedendo*,

do, (made in the 34th of *Edward I.*) wherein I grant they are expressly mentioned: And as for Writs of Summons, you can produce none till the 23d of this King, to Summon them to Parliament; though I shall shew by and by, that the Doctor has found out one of the 18th of *Edward the First*; whereby he proves they were then Summoned, after about Twenty six Years Discontinuance: Therefore, pray shew me if you can by any sufficient Proof, that they were there in *Henry the Third's* Reign, or in *Edward the First's*, till the 18th.

I confess, your Doctor has not only exceeded all other Men, but himself too in this rare Discovery: For whereas in his First Edition of his Answer to Mr. *Pety's* Book, he was content to follow Sir *William Dugdale*, and make the Commons to have been First Summoned to Parliament in the 49th of *Henry the Third*; and to have commenced with *Montford's* Rebellion, and so to have still continued on. Now the Doctor, upon Second Thoughts, in his Edition in *Folio*, will have them never to be Summoned any more than that once; because, forsooth, he cannot find them mentioned in such express Words, as that he cannot evade them, by saying the Sense is Equivocal. And if the Commons not being expressly mentioned in our Statutes, were a sufficient Reason to prove them not to have been there; were the Writs of Summons lost, as well after as they are before the 23d of *Edward the First*; you might as well have faced us down, that there were none in all that Time, till the Statute *de Tallagio non concedendo*, you now mentioned. And for Proof of this, pray see the Statute called *Articuli super Chartas*, made in the 28th of this King; which is said to be made and granted by the King, at the Request of the Prelates, Earls, and Barons, who are only mentioned in this Statute; and yet certainly the Commons were then at this Parliament, as appears by the Writs of Summons and Expences but now mentioned; and sure their Assents were given to it, as well as the Bishops, and Lords. I could shew you the like in many other Statutes of this King; nor are the Words *Communitas*, or Commonalty ever mentioned above Twice in all the Statutes of this King's Reign, viz. in that of *Westminster the First*, and that against bearing of Arms: neither is the Word *Commons* to be found above once or twice in all the Statutes of *Edward the Second*. For in the Statutes made at *Lincoln*, in the 9th of this King, 'tis said to be done by the King, the Counts, Barons, and other *Grands* of the Kingdom. Now if these general Words did comprehend the Commons in those Times, you grant they were constantly Summoned to Parliament: I desire you would give me any good Reason why the same general Words may not as well comprehend them long before? And if the bare Omission of the distinct Orders or States of Men that gave their Assents to the making of any Statute, and the different penning of Acts of Parliament, were a sufficient Reason to prove they had no Hand in it; I doubt two Parts in Three of the old Statutes of *Henry the Third*, and *Edward the First*, would have been made without the Consents, either of the Bishops or Lords; since in most of them there is no mention made of either: And that what I say is true, pray at your leisure peruse these Statutes following, viz. *de Districione Scacarij* of the 51st of *Henry the Third*, with other Statutes made in the latter End of that King's Reign, as also that of *Adon Burnel* made in the 11th of *Edward the First*; that of *Winchester* made in the 13th of this King; that of *Merchants* in the same Year: As also those of *Circumspecte agatis*, and *Quo Warranto*; and see if you can find any mention, either of the Lords or Commons in them.

But to come to direct Proofs: Tho' I grant the Words Knights, Citizens, and Burgesses were not expressly mentioned in our old Statutes; yet I shall prove to you by other Words of a much more Comprehensive Signification, that they appeared in Parliament in the very Beginning of *Henry the Third's* Reign. For this we need go no farther than the Old Manuscripts, as well as Printed Copies of *Magna Charta*; which was first Granted in the Second Year, and again confirmed in the 9th of *Henry the Third*, both which conclude thus: *Pro hac autem Donatione & Concessione, Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites, libere Tenentes, & omnes de Regno nostro dederunt quintem decimam partem omnium mobilium suorum.* Now can any thing be more express than this Clause, viz. That the Archbishops, Bishops, Abbots,

Abbots, Priors, Earls, Barons, for themselves and the inferior Orders, viz. the Knights and Freeholders, and all others of the Kingdom by their Lawful Representatives, gave this 15th of their Moveables, at both those Parliaments, in which this Charter was first made, and afterwards confirmed.

M. I confess this Authority looks very plausible at first; but if it be strictly looked into, I believe it will prove nothing at all: for as to your Interpretation of these Words, I do not allow it, for Reasons I shall shew you by and by. But in the first place give me leave to dispute the Antiquity of this Charter, which I do not take to be so Ancient as you make it; for tho' I grant there was such a Charter made in the 2d, and again confirmed in the 9th of Henry the Third; yet you have already had my Thoughts of this Charter, which you suppose to be Henry the Third's, viz. that this which we now have is not properly his, but his Son Edward the First's; since it concludes thus: *His testibus Bonifacio Cantuariensis Archiepiscopo, E. Londinensi Episcopo, &c. Anno Regni nostri (scil. Henrici 3.) nono*; whereas this Boniface here mentioned, was not Archbishop of Canterbury before the 27 Henry the Third, nor was there any one whose Name began with E. Bishop of London, during the Time that Boniface held the See of Canterbury.

F. I am very glad you have made these Objections against the Validity of this Charter: For if I can prove to you, that what you have now urged from your Friend the Doctor, is a meer Cavil against the Charter it self, I think you have Reason to be my Convert. In the first place, I therefore freely grant that the Original of this Charter is not to be found among the Statute Rolls in the Tower, where there is nothing left of it on Record, except a Confirmation of it by a Charter of *Inspeximus* of Edward the First, (the Conclusion of which is as you have now given) and I think there cannot be a greater Proof of the careless keeping, or Embezzlement of the Ancient Statutes and Records of the Kingdom, than the Loss of this great Charter, which certainly must have been enrolled at the Time when it was made; as well as every common Grant made by the King to ordinary Persons of Markets and Fairs; since we find Copies of it still Extant in the Ancient Annals of divers Monasteries, where the Originals of it were formerly kept; as in particular, in the Annals of the Abbey of Burton, published in the first Volume of Ancient English Writers, lately Printed at Oxford, which fully answers your Objection; for instead of Boniface, it is there Witnessed by S. Archepif. Cant. i.e. Stephen Langton, who was then Archbishop of Canterbury near 20 Years before Boniface: there is also an, &c. after the Name of this Archbishop. And the same Charter is likewise recited Word for Word with the former; and hath the same Conclusion concerning the granting of this 15th, by all the Parties above-mentioned, in the Chronicle of Walter Hemingsford, published by the Learned Dr. Gale, in his 2d Volume of English Historians, only it hath no Witnesses Names at the end, but the King himself, *Tesle meipso*. And farther, both agree in all Things material with four Ancient Manuscript Copies of this Charter, of the 2d of Henry the Third, when he was in Minority, one of which is in the Cottonian Library; a 2d was lately in Possession of Sam. Baldwin, Serjeant at Law; a Third is in the Hands of John Cooke, Esq; chief Prothonotary of the Court of Common Pleas; and a 4th is at this present with Mr. Petyt of the Inner-Temple, which I myself have seen.

Annals Bur.
pag. 271. &c
deind.

Printed at
Oxon, 1587.

But to put this out of all doubt, there is still Extant a fair Original of this Charter of Confirmation of the 9th of Henry the Third, (when he was of full Age) under the Great Seal of this King (which is supposed to have belonged to Battail Abbey) and is now to be seen in the Hands of Sir Nathaniel Powel, Benchet of the Inner-Temple, who is so civil as to communicate it to all who have the Curiosity to see so great a Rarity; so that, tho' it is not to be denied, but that the Charter published by Sir Edward Cooke in his 2d Institutes, is properly the Charter of Confirmation of Edward the First; since Boniface was at that Time Archbishop of Canterbury, and Fulk Bishop of London, (E. being by mistake put for F.) yet I think no Man has any Cause to doubt whether that Clause we dispute about, be not in the Copies of this Charter, as well as in this of Edward the First.

M. Well,

B. A. P.
P. 125, 126.

M. Well, admitting this Charter to be as ancient as you please, yet let me tell you, if your Sense be, that the Words at the End of this Charter, viz. *omnes de Regno*, those who gave or granted this Subsidy, were Members of that Parliament; if you will understand it so, and according to the literal Meaning of the Words, then *omnes de Regno*, as well those that had Estates in Land, as those that had not, all *Copy-holders*, all *Tradesmen*, all *Bondmen* and *Villains* (of which there were great Store in those Days) and all Servants were there present as Members of Parliament. And so then I would willingly understand where all these People should meet, how their Councils should be managed, and how it is possible in such Meetings (if any such there can be) to prevent the greatest Confusion imaginable. The Meaning then of the Words must be, that the Archbishops, Bishops, Abbots, Earls, Barons, Knights, Free Tenants, and all of the Kingdom, or all the King's Subjects, *Dederunt*, that is, paid a Fifteenth Part of their Moveables to the King, for his granting these Charters; not that they themselves gave or granted this Subsidy. And 'tis reasonable to conclude, that all the King's Subjects paid the Fifteenth Part; because one way or other, little or much, they enjoyed the Benefit of them. I take this to be the Genuine Sense of the Words, but *Mat. Paris*, whom you now quoted, makes it very apparent, who were the constituent Parts of this Parliament; for if you please to observe, the Men to whom the Chief Justice proposed this Fifteenth, and those who consulted about the King's Demands, and those that returned an Answer to them; and also granted the Fifteenth Part of the Moveables, as well of the Ecclesiasticks, as Laicks of the whole Kingdom, were only the Archbishops, Bishops, Earls, Barons, Abbots, Priors; and therefore they were the only constituent Parts of this Parliament, as they were also of the Parliament, or great Council held at *Merton*, in the Twentieth Year of this King's Reign; Whither says *Mat. Paris*, *Consummato cum gaudio Nuptiali convivio Rex recedens a Londonijs venit Meretona, ut ibi revocati Magnates una cum Rege de Regni Negotijs tractarent.*

F. I think I can as easily answer this small Objection against our meaning of these Words at the End of this Charter. Do I affirm that these Words are to be taken literally, or the contrary? Therefore you do ill to put a Sense upon me, which I do not allow of. But pray tell who ever was so mad as to believe that these Words are to be understood literally? Or that all those Persons who you here give us a Bed-Roll of, could all appear in Parliament in Person, or had all Votes at the Election of Parliament Men; and yet for all that, this Cause is true in a legal, tho' not in a literal Sense, that all the Freemen of the Kingdom granted this 15th, viz. That the Prelates and Temporal Lords in their proper Persons, and all the rest of the Kingdom by their respective Representatives, granted this Fifteenth. I hope it is a good Rule in your Civil, as well as our Common Law, that he who gives, or grants any Thing by his sufficient *Proxy* or *Representative*, is said to perform it by himself; and in this Sense, all the Men in the Kingdom gave, or granted a Fifteenth for the Confirmation of this Charter; and so at this Day, it may be said in a legal Sense, that all the Men of the Kingdom do join in granting the King a Tax by their Representatives in Parliament, tho' none but such as are Freeholders of 40 s. a Year, can have Votes at the Election of Knights of the Shire, nor any but the Aldermen of divers Cities and Towns, and the Freemen of Corporations, and the Scot and Lot Men of Boroughs, who have any Votes at the Election of Citizens or Burgesses.

And that your Doctor himself, tho' he hath misled you in the Sense of this Word *Dederunt*, yet can grant this to be a reasonable Interpretation of this Clause, when he is in a good Humour; pray remember his Comment upon the Record of the 34th of *Edward the First*, which I gave you but now; wherein, after the *Barones* it follows, that *Milites Liberi Homines & Communitates Comitatum dederunt*, granted a 30th Part of their Moveables, and the *Communitates Civitatum & Burgorum* a 20th; "Whereupon he tells you, "these Words are so expressed as if they had been there all in Person; but "these Words signify no more, than that the Knights and Freemen gave by "their Representatives, and that the Communities of Counties, and these Ci-

tizens

"tizens and Boroughs gave by their Representatives". And why these *Milites Liberi Homines*, & *omnes de Regno*, might not do it as well in the same Sense, in the beginning of the Reign of *Henry* the Third, when this Charter was granted and confirmed, I should be glad if you could give me a sufficient Reason. So that I shall refer it to your own Ingenuity, to consider, when the Charter says expressly, that all the Persons therein mentioned gave a Fifteenth, whether it be not a manifest wresting of the Grammatical Signification of this Word *Dederunt*, to render it they paid; for at this rate a Man may make Words signify just what he pleases. But our ancient *English* Historians are the best Judges in this Case. For the Annals of *Waverly-Abbey* published in the same Volume I last mentioned, under the Year 1225, having given us a short Account of the granting these Charters, 9th of *Henry* the Third, recite the Conclusion of the great Charter in the same Words as they are in the Charter it self; only before *Dederunt* there is also added the Word *Concesserunt*, which shews that the Author of this Part of those Annals, who might very well write at the same Time, or presently after the Charter was granted, by his Paraphrase of *Concesserunt*, seemed to intend to prevent any such Mistake in the Signification of the Word *Dederunt*. And that this was the constant Opinion of all Historians and Antiquaries to this Day, I will shew you from *Henry de Knighton*, who lived within 100 Years after this Charter was granted, and in his History hath this Passage in this Year, viz. 9th of *Henry* the Third; *Post hæc Rex Henricus concessit Magnatibus terræ duas Chartas unam de Foresta, & aliam de Libertatibus ob quam causam Communes Regni concesserunt 15 Partem mobilium, & in mobilium*. From whence it appears plainly that at the Time when this Author writ, it was generally believed that the Commons (called *Milites & Liberi Tenentes* in this Charter) granted this 15th of all their Goods.

*Uid. Scriptores
Cot. 2429.*

I shall conclude with a modern Authority of a Person, who you will own to be a Man of great Judgment and Learning, viz. *Sir Henry Spelman*, who in his Discourse of *Magna Charta*, inserted in his Glossary, hath this remarkable Passage, *Demum Anno 9. Regis Henrici concedente Clero, & Populo cum Magnatibus Quatodecimam partem omnium rerum mobilium totius Regni Angliæ; renovantur Chartæ Libertatam, prout sub Rege Johanne prius erunt conditæ*, where it is plain, that by *Populus* he meant the Commons as distinct from the Lords and Clergy. As for what you say farther, whereby you would set up the Authority of *Mat. Paris* against the express Words of the Charter it self, I suppose you or the Doctor from whom you borrowed this Notion, are the first who interpret ancient Statutes and Records, according to the general Words of Historians: Whereas I always thought till now, that the Sense of the Historians ought to have been understood by Records, and not *vice versa*; since the former differ one from another in the Manner of Expression of the constituent Parts of our great Councils or Parliament, and for brevity sake, express themselves in as few Words as they can.

Pag. 376.

But notwithstanding the Conciseness of those Expressions which we find in *Mat. Paris*, and other ancient Authors; yet I think even in this Place now cited, there are Words enough to prove there were other Lay-Persons at this Council, besides Earls and Barons there mentioned; or else, what is the meaning of these Words *aliis Universis* immediately after *Baronibus*, to whom *Hubert de Burgh* proposed the King's Demands, and who also gave their Answer to them? And if these Gentlemen were not Barons, as certainly they were not (or else to what Purpose was this Distinction made) then they were meer Commoners; and so we find there were Commons in Parliament, from the Authority of *Mat. Paris*, that before the 49th of *Henry* the Third; which is likewise proved by the Statute of *Merton* (which I have lately cited) in the Conclusion of its Preface, which runs thus, *Ita provisum fuit, & concessum tam à predictis Archiepiscopis, Episcopis, Comitibus, Baronibus, quam ab ipso Rege, & Alijs*. Now pray tell me who these & *Alij* were, if not the Commons, for you did not answer this Question when I last mentioned this Statute.

M. I shall tell you my Thoughts of these *Alij* by and by, when I come to these Words *omnes de Regno*; but in the mean Time, give me leave to give you the Doctor's Interpretation of this Word *Milites* put here after

Barones,

Fol. 445.

Barones, which *Milites* were not Knights of Shires (as you suppose) but Tenants *in Capite* by Military Service; as appears by the Assize or Statute of Richard the First, quoted by R. Hovenden in his History, which is said to have been made, *per Assensum & Consilium Archiepiscoporum, & Episcoporum, Abbatum, Comitum & Baronum, & Militum*. Now these *Milites* were often stiled *Barons*, and the *Barons*, *Milites*. Nam Miles (saith Sir Henry Spelman) quem Baronem vocabant non à Militari Cingulo (quo Equites creabantur) sed à Militari Feodo, quo alias possessor & liberè Tenens, nuncupatus est, nomen sumpsit, that is, such as had Lands given them for, or such as held Lands by Military Service, and did Homage and Fealty to those of whom they held their Lands; and in this Sense, *Mut. Paris* calls all the Temporal Nobility *Milites*, when in the Parliament 37 of Henry the Third, he says, à Militibus Concessum est Scutagium illo Anno ad Scutum tres Marcæ.

F. I think your Interpretation of the Word *Milites* is forced, and quite contrary to the true meaning of this Charter: Now pray shew me the Consequence, that because the Barons were anciently stiled *Milites*, that therefore your Tenants *in Capite* were then stiled *Barones* too; which is not true, and quite contrary to this Charter it self, where these *Milites* (whoever they were) are put after the *Barones*, as a distinct Order of Men from them; whereas if the Terms had been then reciprocal, the Words *Barones*, or *Milites* (chuse which you please) would have comprehended both; but indeed this Title of *Miles* was then of a much larger Signification, and took in all Knights of whatsoever Tenancy, whether by Military Service or Soccage; as appears by those Writs of the 25th and 26th of Henry the Third, which I have already cited; whereby those that held Estates sufficient to maintain themselves *de Tenemento suo tam militari, quam Soccagio*, were alike Summoned in to take the Order of Knighthood; and when Knighted, were certainly as good *Milites* as the best of your Tenants *in Capite*; and so might very well be reckon'd amongst the *Milites* in this Charter. But pray tell me what say you to these following Words, *Liberi Tenentes & omnes de Regno*?

B. G. p. 64.

M. These will likewise bear a like Interpretation; for by these *liberi Tenentes*, that immediately follow in this Charter after *Milites*, I suppose were meant no other than the lesser Tenants *in Capite*, who having scanty Knights Fees, or part of Knights Fees, desired not Knighthood, or had compounded, or fined for it, that they might not be made Knights, and who not being actual Knights, are here called Free Tenants or Freeholders, as I have already told you at our last Meeting:

F. Pray give me leave to answer this Interpretation of the Word *Liberi Tenentes*, before we proceed farther. You may remember that I have answered all your Authorities, whereby you would prove that the Tenants *in Capite* were at this Time the only proper Freeholders of the Kingdom; since I then proved to you from Sir Henry Spelman's Glossary, that any Freeman having an Estate of Inheritance, was as much the *Liberi Tenens*, a Freeholder, as the best Tenant *in Capite* in England. Indeed if the Words had been *Milites & liberi Tenentes, qui de Rege tenuerunt in Capite*, you had said somewhat; but otherwise it is all meer Supposition, without any Ground. But pray go on to the last Words in this Charter, *& omnes de Regno nostro*; what can they mean, but that all the Freemen of the Kingdom gave this Fifteenth by their Lawful Representatives?

Ibid. p. 65.

M. If you do not like our Sense of these Words, *Milites* and *Liberi Tenentes*; I cannot help it, nor shall I dispute them longer with you; but as for this last Clause in the Charter, *& omnes de Regno*, it only means, all those who were Tenants *in Capite* in general in the same Sense; as when our Ancient Historians mention *Regnum & Sacerdotium*, by *Regnum* is to be understood both the Temporal and Spiritual Barons, great and small; the King's Justices, or any other that exercised any share or Ministerial part of the Government; as perhaps all those did one way or other, by coming to our Great Councils or Parliaments, &c. all which is evident from the Words of the *Quadri-partite History*, concerning Thomas Becket, thus, *Rex apud Clarendum, Regnum convocavit universum. Quo cum venissent Praesules, & Proceres, &c. i. e.* the whole Baronage called together by the King's Writ, or a full Meeting of the Spi-
ritual

ritual and Temporal Barons, both great and small. I pray also remember that Passage you your self made use of but now, out of *Mat. Paris*, whereby you would prove that the Common Council of the whole Kingdom was distinct from that of the Tenants *in Capite*; because that after the *Curia* held at *Christmas*, the King immediately issued out his Writs, commanding *omnibus ad Regnum spectantibus*, to appear at *London*; and yet you see there are no more mentioned to be Summoned than the Archbishops, Bishops, Abbots, Priors, Earls and Barons. So that we may hence learn the true Meaning of these Words, *omnes de Regno spectantes*, in *Mat. Paris*, the *Regnum*, or Government, the *Communitas Regni*, the *totalis Regni universitas*, the *infinita nobilium multitudo*; and also gives us the Meaning of those Words, *omnes alii de Regno*, in the Close Roll of the 19th of *Henry the Third*, to the Sheriff of *Somersetshire*, *Scias quod Comites & Barones, & omnes alii de toto Regno nostro, &c. Concesserunt, &c.* Which are further explained by a Writ in the same Roll about the same Business, directed to the Sheriff of *Sussex* (which you have likewise cited) beginning thus, *Sciatis quod Archiepiscopi Episcopi, Abbates, Priores, Comites, Barones, & omnes alii de Regno nostro Anglie qui de nobis Tenent in Capite nobis concesserunt, &c.* Here the *omnes alii de Regno*, were the *omnes qui de nobis Tenent in Capite*; which were then all the *Regnum*, or *Communitas Regni*. So likewise it may be farther proved from a Record of the 48th of *Henry the Third*, *Rex omnibus, &c. cum venerabiles Patres, G. E. Eborum Archiepiscopus, &c. & alii Prelati, Magnates, Milites, liberi Tenentes, & omnes alii de Regno nobis nuper in Articulo necessitatis servitium fecerant, & subsidium, &c.* And I may also put you in mind of the Writ I cited but now, directed *Archiepiscopis, Episcopis, &c. Comitibus, Baronibus, Militibus, & omnibus aliis de Comitatu Cantue, &c.* for the Levying of Forty Shillings upon every Knights Fee in that County. Now this Writ could not be directed to all the Men in *Kent*, but to all such as paid *Scutage*; for not a Fortieth Part of them were Tenants *in Capite*, or Military Service. So that these *omnes alii de Regno*, and *omnes alii Comitatus*, were the same one with the other, and otherwise it could not be: For by *omnes de Regno*, or *omnes alii de Regno*, the Inhabitants in general could not be understood, for they never were Summoned, no not the Hundredth Part of them, to meet in Great Councils; for 'twas impossible they should; and perhaps not above a Fourth Part of the Kingdom paid to this Fifteenth, if we consider how many Servants, Villains, Bondmen, and many such People there were then in the Nation that paid nothing.

F. You have taken a great deal of Pains to perplex and darken Words in themselves very clear and perspicuous; for methinks it is a strange piece of Confidence in your Doctor, when the Charter says expressly, That *Omnes de Regno*, all the Freemen of the Kingdom gave this 15th, to restrain this Act only to the Tenants *in Capite*, who were but a few in Comparison to the whole Kingdom; this is indeed to make Words signify any Thing he fancies.

But to answer your Authorities, which are founded all upon false Suppositions, without any Proof. As to your Authority from the *Quadrilogus* History of *Thomas Becket*; it is true, that the *Præsules* and *Proceres* are there called *Regnum*, the Kingdom; but I have already proved at our last Meeting, that this Word *Proceres* was of so comprehensive a Signification, that it took in all the Principal Men of the Kingdom, as well those that were Lords, as those that were not; so that the chief Citizens and Magistrates of our Cities and great Towns, are often stiled *Proceres & Magnates Civitatum*, in our Ancient Historians and Records; and certainly the great Freeholders, or Knights of Shires did much more justly deserve that Title.

As for the other Passage out of *Mat. Paris*, where the Bishops, Abbots, Earls and Barons, are called *omnes ad Regnum spectantes*; this is but a general way of Expression in this Author, and proves nothing: For either the Word *Barones*, takes in all the smaller Tenants *in Capite*, or it does not; if the latter, then this Author does not exactly recite all the Orders of Men, whom your self must acknowledge to have appeared there; since the great Barons alone could never make this *infinita Nobilium multitudo* mentioned in this Author; if the former, then it is plain, that he thereby comprehended more than those who were

really Barons. Since it is certain that the smaller Tenants *in Capite* were not really so, and consequently were meer Commoners, as I have told you more than once. And then make the most of this Word *Barones*, it may in a large and common Acceptation, take in all the chief Freeholders, or Lords of Mannors, which (as I have already proved) were often called Barons in our Ancient Historians, and Laws of the first Norman Kings; and Mr. Camden tells us, that under the Word *Baronagium*, *omnes Regni ordines conminerentur*. This I say, supposing that by this *infinita Nobilium multitudo*, is to be understood, all the chief Gentry, or Freeholders of England, called often *Nobilitas Anglie*, as I have already made out, and which may also take in the Representatives of Cities and Towns; but if we should suppose, that by the *Barones* here mentioned, are to be understood only the Tenants *in Capite*; yet, since they, together with the great Lords, made the chiefest Figure in the Government; it was easy for this Author to overslip the particular Mention of others, it being enough to comprehend them with the Representatives of the rest of the Kingdom, under the general Phrase of *Infinita Nobilium multitudo*: As I have already said, the Conciseness of Historians, was to be explained by our Statutes and Records, and not that their express Words should be interpreted by the obscure or general Phrases and Expressions of Historians; and if by *omnes de Regno*, are to be understood all the Tenants *in Capite* in general; how could this be without a notorious Tautology? Since if it be as you say, that the Bishops, Abbots, Earls and Barons, comprehended all the greater Nobility, and the *Milites & liberi Tenentes*, all the lesser, or Tenants *in Capite*, (who made then the whole Kingdom) if so, what can these Words *omnes de Regno* here signify, but so many idle Words without any Sense or Meaning?

But it will be now more easy to answer your false Interpretation of these Words, *omnes Alij de Regno*, which you will needs have to signify only the Tenants *in Capite*; and it will be no hard Matter to shew you the Doctor's Prevarications on these Words; for as to the first Writ directed to the Sheriff of Somersetshire, though I confess the Words at the beginning of the Writ, are *omnes alij de toto Regno nostro*; yet the Doctor has in his Glossary purposely concealed the Words that follow, which plainly restrain them to Tenants *in Capite*, and their Under-Tenants by Military Service. But if you please but to turn to the Writ which he has given us at large in his Appendix, Numb. 14. you will find, first, that this Writ recites, that the Earls, Barons, and *omnes Alij de Regno*, had granted the King an Aid of Two Marks on every Knights-Fee, *qua de nobis Tenent in Capite*. Secondly, That at the Command of the Earls, Barons, and all others that held *in Capite*, the Sheriff should distrain *omnes milites & liberi tenentes qui de eis tenent per servitium militare*, who were likewise to pay the King the like Sum of Two Marks for every Knights-Fee; so that you may here plainly see, that this could be no general Tax granted by the whole Kingdom, since none but Tenants *in Capite*, and their Under-Tenants by Knights Service, were chargeable with it; which, if given with their Consents, must have been done in full Parliament, and in which they had Representatives of their own chusing; and if without their Consents, was directly contrary to Law.

But you need go no farther than this Writ you have now cited, to prove that the *Milites & liberi tenentes*, were not at this Time only Tenants *in Capite*, as you suppose, but their Feudatory Tenants also; as appears by the express Words of this Writ, which orders and directs the Sheriff to distrain *omnes Milites, & liberi Tenentes qui de eis tenent per servitium Militare*. But as for the other Writ to the Sheriff of Sussex, which (as you say truly) relates to the former, to the Sheriff of Somersetshire; it sufficiently interprets those general Words, *omnes alij de Regno*, and expressly restrains them to *omnes alij qui de nobis tenent in Capite*, who in a Council of themselves alone, granted this Tax for themselves only, as I have already proved; which, whether it was according to Law or not, we shall enquire by and by.

But in the mean Time, give me leave to answer your next Record, of the 48th of Henry III. which recites an extraordinary Service and Aid done by the *Prelati, Magnates, liberi Tenentes, & omnes alij de Regno*: Now that this was not a Service performed, or an Aid given by the Tenants *in Capite* only for the

the whole Kingdom, the Word *Subsidium* in the Writ may teach you, which was never granted otherwise than by the whole Kingdom in Parliament. But let us first consider the Substance of this Record, which is indeed but the King's Declaration of a Right to all his Subjects in general, or the Freemen of the whole Kingdom, that what they had lately performed in *Articulo necessitatis predictæ*, *non sibi cedat in præjudicium, nec ad posterum trahatur in consuetudinem, vel consequentiam nec ad hujus modi servitium compellentur*; which being the Effect of this Record, now see the Cause why it was granted, which you may find in another Record of the same Year, and on the Roll, and to which this Record you cited relates, which is a general Summons directed, *Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Vice comitibus, Militibus, liberis Hominibus, & universæ Communitati Comitatus Lincolnie*, commanding them all, even the Citizens and Townsmen, immediately to appear with such Arms as are there expressed (and were proper for each Man's Estate and Condition) for the common Defence of the Kingdom, against Strangers then ready to invade it; and this Record also says, *codem modo scribitur ceteris Vice-comitibus Angliæ*. Now since it appears by this Writ of Summons, by which this Service and Aid was performed, that not only the Tenants *in Capite*, but all the Subjects of the whole Kingdom, were engaged in the Performance of it; can any body, but one who will take Things by halves, suppose that by these *omnes alij de Regno* there mentioned, (and who must certainly be the same Parties intended in the Doctor's own Record, *viz.* all the Freemen of the Kingdom) could be meant no more than the Lesser Tenants *in Capite*, taken altogether, when they had been (according to our Sense) all particularly named before?

M. 9. d. r. o.

But that by these *omnes de Regno*, cannot be here meant only the Tenants *in Capite*, but all the Freemen of the whole Kingdom, I shall prove by another Record of the 16th of Henry III. and is the very Writ I gave you before, wherein it is recited, that the *Villani*, together with the rest of the *Liberi Homines*, had given a Thirtieth Part of their Moveables; in Consideration of which, this Writ concludes thus. *Concessimus etiam Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & vobis omnibus Aliis de Regno nostro, quod tam Charta nostra, de Foresta, quam alia Charta nostra de Libertatibus, quas eis, & vobis fieri fecimus de cætero in omnibus teneantur*; so that it plainly appears, that by these Words in this Record, *omnibus Aliis de Regno*, must be understood all the Freemen of the Kingdom in general, unless you will allow none to have had any share in these Charters, or to have received any Benefit by them, but the Doctor's Tenants *in Capite* alone; which sure you will not affirm.

Rot. Cl. 2.
Mem. d. r. o.

But lest I tire you as well as my self, in dwelling so long upon Things so plain and obvious, were not they by too much Artifice rendred obscure, I come at last to the Conclusion of your Discourse, which is no more than a Repetition of what you had said at first; that because all the Kingdom could not be summoned to appear in Parliament, and that *Villains* and Servants, &c. never paid to this Tax; that therefore the Words *omnes de Regno* are not to be understood literally; (a doughty Discovery) and therefore you have found an Expedient to help this Contradiction by your Tenants *in Capite*; and I by Knights, Citizens and Burgeesses for the Laity, and by the *Procuratores Cleri* for the Inferior Clergy. Whose Interpretation is most agreeable to Truth, I durst leave to any indifferent Judge; for I must needs tell you once again, I cannot see any manner of Reason, either from Authorities, or from the Nature of the Thing, that ever your Tenants *in Capite* could be the *omnes de Regno* in a legal Sense, and as such did represent all the Freemen of Estates in the whole Kingdom; therefore if you can prove this, it may go far to convince me, otherwise not.

M. Since you will not rest satisfied with those Authorities I have already produced to prove it; pray let me Discourse with you a little more particularly of the Nature of *Tenures* by Knights Service. I therefore suppose that the Doctor hath very well proved by several Records, as also the Two Writs of the 19th of Henry the Third, to the Sheriffs of *Somerset* and *Sussex*, that the King anciently by his Prerogative, and his original Power and Right reserved upon Knights Fees, did Tax the Military Tenants of his Tenants *in Capite*, and their other ordinary Free Tenants, and by his Writs caused them to pay

B. A. P.
117. E. d. r. o.
Ibid. 121.

both Scutage Tax, and Scutage Service, and other reasonable Aids, as often as Necessity required.

F. I grant indeed the Matter of Fact to have been sometimes as you say, since there is no averring against express Records; but I say likewise, that as for those Writs the Dr. has given us, concerning the King's Ordering the Sheriffs to distrain the Mesne Tenants of the Tenants *in Capite* for Scutage-Service, as to Marry their Daughters, or for the finding of Men in any War-like Expedition; it was no more than what those Mesne Tenants were bound to do by the *Tenures* of their Estates; if they had failed to serve their Lords in Person, or by sufficient Deputies: And therefore the King might legally grant them Scutage upon such Tenants; and perhaps might also change their Service in Person into a pecuniary Aid, as appears by some of those Writs the Dr. has given us; and this not by his extraordinary Prerogative, but by Law. So likewise, tho' your Tenants *in Capite* could Tax themselves in their distinct Council, or else in the Common Council of the whole Kingdom, at what rate they pleased, for the Knights Fees they held of the King; and tho' the King might sometimes undertake, by this Pretence, to Levy a Scutage of Two Marks on their Under-Tenants also; yet does it not appear by either of those Records you have now cited, that they gave for more than themselves alone; the Words in the Writs being only, that they had given the King *Efficax Auxilium* of Two Marks upon every Knight's Fee (as well Wards as others) who held of him *in Capite*, without any mention of their Mesne Tenants. So that if the Sheriff was afterwards ordered to distrain these Mesne Tenants also, for Two Marks for each Knight's Fee they held of their Lords; this was straining a Point of Prerogative; for by the same Rule the King might (by the like Prerogative) have Taxed all the Bishops, Abbots, Great Lords, and all other Tenants *in Capite*, without their Consents, as well as their Mesne Tenants, tho' it was contrary to the express Words of the Charters of King William I. and King John, which you your self cited at our former Meeting: So that granting the Matter of Fact to have been practised sometimes, as your Records make out; this is no Proof that this was a constant Law, or settled Custom; much less that the King had a Right so to do.

B. I. A. Pag.
179, 180.

Rot. II. Hen.
3. M. 19.

Pl. 442.

Pl. 209. A. D.
1203, 1207.

M. I.

B. A. 7. 178.

M. I do not doubt but that I can prove to you, that what this King then did in charging these Mesne Tenants, was according to his Ancient Prerogative, and what himself and his Predecessors had frequently done, both before and after that Clause in King John's Charter of *Nullum Scutagium, vel Auxilium ponam in Regno meo, &c.* was granted; nay after it was granted by Henry III. and Edward I. that they taxed their Demesnes thro' England, (tho' not the whole Kingdom) by the Advice of their Privy-Council, until the Statute *de Tallagio non concedendo* was made, in the 34th of Edward I. And both Richard I. and King John, had taxed the whole Kingdom, without common Assent, before the Grant of *Magna Charta*: As also in the Reign of Richard I. as you may find in *Hoveden*, who lived at that Time; (the Passage is long, and therefore I shall only give you the Beginning of it;) viz. that this King, Anno 1198. (Regno 9.) *acceptit de unaquaque Carucata Terræ totius Angliæ, V. Solidos de Auxilio, &c.* And then goes on to shew us the Manner how it was raised and collected; and 'tis observable, that he uses these Words, *Auxilium* and *Tallagium*, for the same Tax. So we find in *Mat. Paris*, That King John took a Seventh Part of all Moveables, without common Assent, and another time a Thirtieth; the Great Men and Clergy grumbling at it. King Henry III. also taxed all his Demesnes, in the 33d Year of his Reign, as appears by a Writ in the Close-Roll of this Year; whereby he also commands the Sheriff of Bucks, that he make Philip Basset a *Rationabile Tallagium, de hominibus suis de eo tenentibus in Manerio de Wycumb, quod aliquando fuit Dominicum Prædecessorum Regis, &c.*

In the 39th Year, this King (as the Doctor shews us at large, by a Record in the keeping of the Remembrancer of the *Exchequer*) taxed all his Demesnes; and, among the rest, the City of London at 3000 Marks; which, tho' with some Contest, (mention'd in this Record) they were at last forced to pay; because it was found upon Record, that this King, and his Father, had several times Talliated (or Taxed) the said City in like manner, at the

Sums

Sums therein mentioned ; so that at last the Mayor and Citizens were fain to acknowledge themselves thus Talliable by the King.

So in the 52d Year of his Reign, he Taxed all his Demefne-Lands beyond *Trent*, by his Escheators : And this Right was acknowledged by all the Bishops, Earls and Barons, in the 33d Year of *Edward I.* as appears by their Petition to him in Parliament, in these Words : *Ad Petitionem Archiepiscoporum, Episcoporum, Prelatorum, Comitum & Baronum, & aliorum proborum hominum de Terra petentiam quod Rex concedere velit quod ipsi possint talliare antiqua dominica, unde sunt in Tenantiis, sicut Rex Dominica sua tallavit ; ita responsum est, fiat ut petitur.* *Rot. Cl. 52.
H. 3 M. 10.
Ryley's Placit.
Parl.*

From all which you may plainly see, that the Kings of *England* had anciently a Prerogative of laying Taxes, not only upon their own Tenants and their Mesne Tenants who held under them, but upon the whole Kingdom too ; and if their Successors have acted otherwise, it has proceeded from their meer Grace and Favour, who have tyed up their own Hands from exercising this Prerogative.

E. Pray, Sir, observe, that you have now quitted the main Question, Whether others besides the Tenants *in Capite* appeared in Parliament before the 49th of *Henry* the Third ; and after that, till the 18th of *Edward* the First. And now start a new Point, Whether the King, with the Consent of his Tenants *in Capite* would not Tax the whole Kingdom ? And to make out this, you have mustered up a great many Authorities ; but for what End I know not, unless it be to prove that some former Kings stretch'd their Prerogative to act directly against Law, and their own Charters to the contrary ; and to justify them in it when they have done ; as if all Things were done according to their Lawful Prerogative, because they did it. If this be Law or Reason either, much good may do you with it : For at this rate the King, notwithstanding all Laws made and sworn to by him to the contrary, may take what he pleases out of our Estates without our Consents, because his Predecessors broke the Laws, and their Coronation Oath into the Bargain. But you might have remembred, that *à de facto ad jus, non datur consequentia* ; but I doubt the Precedents you have now brought, will not come up to the Proof of the Assertion you have laid down : For it is plain, as well from King *John's* Charter, as by that Passage in *Bracton* I but now cited, whereby it appears, that extraordinary Taxes, such as *Hidage*, *Corage*, and *Carvage*, & *alia* (under which I suppose was included your Scutage-Tax also) could not be imposed without the Consent of the Common Council of the whole Kingdom, when the King met his People in Parliament. If then this were Law, whatever King *John* or *Henry* the Third, or any other King acted contrary to this Rule, was illegal, and produced among other Mischiefs the general Revolt of all the Baronage, *i. e.* as well the Inferior as Superior Nobility of the whole Kingdom ; till such Time as our Kings finding they could do no good by Force, were fain, at last to content themselves with the Legal Prerogatives of the Crown, and by new Laws and fresh Declarations of the Ancient Law, to declare it unlawful for them to impose any Taxes upon their Subjects, without their Consents in Parliament.

But let me tell you, that by thus setting up the King's Illegal Prerogative of taxing the Mesne Tenants of their Tenants *in Capite*, you quit the Question ; For I asked you by what Right the Tenants *in Capite* (whom you suppose) could grant by this great Charter a Fifteenth of the Moveables of the whole Kingdom, as well of those who did not hold of them by Military Service, as of those that did ; nay of those who never held of them at all ? And you then fly presently to I know not what unknown Royal Prerogative of Taxing the Mesne Tenants of the Tenants *in Capite* at pleasure ; which you must allow, either was according to Law, or it was not : If the former, I have already proved he could not do it by Law at all ; but if against Law, there was the like Reason why he should have had the like Prerogative over his Tenants *in Capite* too ; even over the very Bishops, Abbots, and Temporal Lords : And then I desire to know whether the great Council of the Kingdom had not been long since destroyed and given up.

But to examine your Authorities. It is true, *Hoveden* says of *Richard* the First, that *accepit de unaquaq; Hida Terræ V. solidos*; yet does it not therefore follow, that he took this Tax without consent of his great Council. It was the ordinary Phrase of Writers in those times, to say, *Rex accepit*, i. e. received such a Tax, when indeed he took nothing but what was given him by his Parliament. And therefore, tho' we find this Tax not mentioned in any other Writer, but only *Hoveden*, and so cannot give you an expresse Proof that this Tax was granted in a Great Council; yet it is most likely (nay, certain it was) for the Word *accepit* does not in its own nature import any violent or illegal Exaction: And therefore considering the nature of the Thing it is greater Reason to suppose, that this Aid was granted by Consent; since this same Author tells us, in the Relation of this Affair, that this Money was received by the Hands of two lawful Knights of each Hundred, and that they did Answer this Money to the *Exchequer, Coram Episcopis, Abbatibus, & Baronibus ad hoc assignatis*, who would never have undertaken it, had not this Tax been granted by the Common Council of the Kingdom; but that this King could not Tax the whole Kingdom at his pleasure, may appear by a Relation out of this very Author, in the very same Year, but a little before, *viz.* That when the King demanded by *Hubert*, Archbishop of *Canterbury*, that *Homines Angliæ*, the Men of *England* should find him 300 *Milites*, i. e. Knights to stay one whole Year in his Service, or else would give him so much Money, as that he might therewith maintain those 300 Knights in constant Pay, *viz.* "to every Knight Three Shillings of *English* Money "Wages a Day; and that to grant this, all the rest were willing, as not daring to resist the King's Will; only *Hugh*, Bishop of *Lincoln*, as a true Servant of God, abstaining from all evil, answered, That he would by no means agree to the King's Desire, because it would redound to the detriment of "his Church, &c." And so it seems the Business fell and came to nothing. Now it is plain, that this Request must have been made in the great Council of the Kingdom, or at least in that of the Tenants *in Capite*; and if he could not charge his Subjects with the keeping but of 300 Horsemen for one Year, without their Assents, can any Body believe that he should presently after extort a much greater Sum, *viz.* Five Shillings out of every Plowland in *England*? But as for all your Precedents for King *John's* Reign; he was such a Notorious Tyrant, and Breaker of his Coronation Oath, and common Faith both to God and Man, that I hoped that neither your self nor any good *English*-Man would have fetch'd Precedents for Prerogative, from so profligate a Reign as his; and in which I grant there were more than once Illegal Exactions of this Nature; which yet are branded by those very Historians that relate them, for great Oppressions and unjust Exactions; as particularly in this first Instance out of *Mat. Paris*, of King *John's* taking away by Force the Seventh of the Moveable Goods of the whole Kingdom; which is by this Author called by no better than *Rapinian*, Rapine or Robbery.

Vid. Chron.
Thom. Wikes,
& Annales de
Waverly in
Anno 1207.
Published at
Oxford.

The same I may say to the like Exactions of his Son *Henry* the Third, which are branded by all Writers, as horrible and illegal Oppressions; nay, are owned to be so by this King's frequent Confirmations of *Magna Charta*, and Acknowledgments of his Breach of them, and Promises to observe them better for the future. But I am sorry to find your Doctor, whom you follow, both in his Answers to Mr. P. and Mr. A. as also in his compleat History, still to cite the most violent and illegal Actions, nay the very Perjuries, for Flowers of the Crown, and Royal Prerogatives.

But as for the Authorities you urge for this King's Talliaging his Demesnes without Consent of Parliament; you your self grant that this Talliage was not general upon the whole Kingdom; and if so, could only concern his own Tenants in Ancient Demesne, and none else; who were always exempted from being taxed with the rest of the Nation, because they were liable to yield the King a reasonable Talliage, *ratione Tenuræ*, whensoever he needed it; yet this was counted rather a Privilege than otherwise; since they were not only free from all other Burthens and Parliamentary Attendance; but were also Taxed much less than the rest of the Nation, in regard of their Tilling the King's Lands for the Maintenance of his Household: But when this reasonable Prerogative
grew

grew to be abused, and the Exactions levied upon them became intolerable, then they would no longer suffer it; but got it taken away by the Statute *de Tallagio non concedendo*. After which we find the Tenants in Ancient Demefne frequently giving their Shares of Aids and Subsidies in Parliament by Delegates of their own, as in the Record of the 35th of *Edward* the First, which you have now cited; till at last they came to be resolved into the common Body of the Kingdom; but as for the City of *London*, it was never taken for part of the King's Demefans; and so is not to be found in *Doomesday-Book*; but as appears by Record, held of the King *in Capite*; and therefore could be no otherwise Taxed than as the rest of the Tenants *in Capite*, that is, by the Common Council of the Kingdom. And this made the *Londoners* deny to be otherwise Talliated, as appears by this Record of *Henry* the Third, which you have now cited. But the truth is, they had this Exaction first laid upon them in the exorbitant Reign of King *John*; and this was afterwards trumped again upon them in all the ill part of his Son's Government, because his Father had done it before; and I doubt not but if Ship-Money had passed unquestioned, and been as often paid in the Reign of King *Charles* the First, but that it would have been urged as a Precedent in the Reign of *Charles* the Second.

But as for your last Authority of the 33d of *Edward* the First, pray take Notice, that it is before the Statute *de Tallagio non concedendo*, and extends only to such Estates in Ancient Demefne, as were held of the King by Noblemen or Gentlemen, either by Gift, or Purchase; and which, for all that, still kept the Ancient Custom of being Talliated by the King, as their Under-Tenants were by them, to enable the Lords to pay the King's Talliage; and in this Sense I understand these Words in this Record, *unde sunt in Tenantia*; i. e. of which they are in Tenancy to the King. Nor does the Record call them *Dominica sua*, as it does the King's Demefnes that follow: So that this could not be a Tax upon all Under-Tenants by Knights Service, as you suppose; since their Estates were never called *Antiqua Dominica*, and therefore I think after all, you cannot shew me any legal Precedent that our Kings claimed a Right under Colour of their Prerogative, of Taxing the whole Nation *de Alto & Basso*, at their pleasure.

M. I shall not now dispute it longer with you, whether the Kings of *England* had not anciently a Power of Taxing the Lands held of them, without the Consent of their Great Council; but thus much I think I may safely aver, That when this Great Charter was made, the Tenants *in Capite*, as the Common Council of the Kingdom, gave Taxes and made Laws, not only for themselves but their Mesne Tenants, and the whole Nation also. Nor was this at all unreasonable, that those who thus held Estates by Mesne Tenure under the Tenants *in Capite*, should be bound by the Acts of those of whom they held them; since we see in *Scotland*, that at this Day none sit there, either as Commissioners of Shires, or Burgeses for the Royal Boroughs, but such as hold *in Capite* of the King; for anciently, before the Law for excusing the smaller Barons or Tenants *in Capite* from coming to Parliament, and sending Commissioners of Shires in their stead, was introduced by a Statute made in the Seventh Parliament of King *James* the First, *Anno Dom. 1420*, it consisted all of Tenants *in Capite*, viz. of the Bishops, Abbots, Priors, Earls, Barons, & *Liberi Tenentibus qui de Rege Tenent in Capite*; as appears by the very Words in the *Latin* Titles to divers of those Statutes, as you may find them in *Skene's* Collection of *Scotch* Laws. Now if this Law did anciently, and does still prevail in *Scotland*, that the Tenants *in Capite* should be the sole Representatives of that whole Kingdom, I cannot see any Reason why it might not have been so anciently in *England* also, especially since I can give you so good Reasons to back this Opinion.

F. I will Answer your Argument from *Scotland* by and by; but in the mean Time give me leave to tell you why I think it could never have been the Custom in *England*; and that for two Reasons, First, because it was against Reason; and 2dly, because it was against the known Law of the Kingdom. That it was against Reason, is apparent; since what Reason was there, that if a Man in those Times purchased an Estate for a valuable Consideration, of a Lord,

B. A. 7. pag. 176.

Lord, or any other Tenant *in Capite* (as certainly Thousands did) to be held either by Knight's Service, or in Soccage, that such a Tenant should lye at the Mercy of his Lord, to dispose of his Estate in Taxes, and make Laws for him at his Pleasure; however exorbitant those Taxes were, or inconvenient those Laws might prove; the Lord being no Representative, of his own Choice or Appointment?

In the next Place, that this was contrary to the received Law and Custom of the Kingdom in these Times, I can prove by Two very sufficient Authorities, the one of the Earl of *Chester*, the other of the Bishop of *Durham*. Now it is certain that both this Earl and Bishop held their County Palatines *in Capite* immediately of the King, nor had those Counties any Representatives in Parliament, till long after that they had Knights of Shires and Burgesses granted them by particular Statutes made for that Purpose; now according to your Hypothesis, all the Freeholders and Inhabitants of those County Palatines should have been bound by all Acts of Parliament, and Taxed with the rest of the Kingdom as often as there were Laws made, and Taxes given when their Bishop or Earl was present, which was not so; for in the first Place as for the County of *Chester*, if the Earl had been the Representative in Parliament of his Tenants by Knight's Service or otherwise, as also of all the Abbeyes, and the City of *Chester* it self, and all other great Towns in that County, his Vote in Parliament would have obliged all of them; and there would have been no need of a Common Council or Parliament of the States of the whole County, in which they then made Laws, and taxed themselves as a separate Body from the rest of the Kingdom; as may appear from these following Records which Mr. A. hath given us; the first of which is a Writ of King *Edward* the First, directed *Archiepiscopis, Episcopis, Abbatibus, Prioribus, Baronibus, Militibus, & omnibus aliis Fidelibus suis in Comitatu Cestrie*; reciting, That whereas the Prelates, Counts, Barons, & *alii de Regno*, had given him a 15th of their Moveables, he desires that they also would of their Benevolence and Courtesy (in Latin *Curialitate*) grant him the like Subsidy; which, Note, could not be done out of a Common Council.

J. A. P. 12.
Rot. Pat. 2.
E. 1. M. 6.

Rot. Pat. 20.
E. 1. m. 6.

So likewise in another Writ of the 20th of this King, reciting, That whereas the *Probi Homines, & Communitas Cestrie sicut ceteri de Regno nostro 15mam partem omnium mobilium suorum nobis concesserunt gratiose*. Now supposing (as the Doctor always does) that these *Probi Homines* were the Earls Tenants *in Capite*, what can this Word *Communitas* here signify, but another Sort of Men distinct from them, *viz.* the Commonalty or Commons of that County? And which is also remarkable, this County was now fallen to the Crown for want of Heirs Male of the last Earl; and so according to the Doctor's Notion, the King being their sole Representative needed not to have been beholden to them for these Subsidies; since tho' not as King, yet as Earl of *Chester*, he might have taxed them himself; which yet he thought not fit to do, because he knew it was contrary to the Rights and Privileges of that County, which had ever since the Grant of it to *Hugh Lupus* by *William* the First, always been taxed by themselves.

P. R. C. p 45,
46.

Which Privileges are also expressly set forth in a Supplication of all the Estates of this County Palatine to King *Henry* the Sixth, which Mr. P. has given us from an ancient Copy of it then in the Hands of Sir *Thomas Mainwaring* of that County, Baronet: Wherein the " Abbots, Priors, and Clergy, Barons, " Knights, Esquires, and Commonalty, set forth, that they with the Consent of " the Earl, did make and admit Laws within the same, &c. and that no In- " heritors, or Possessors within the said County were chargeable or liable, or were " bounden, charged, or hurt of their Bodies, Liberties, Franchises, Lands, Goods, " or Possessions, unless the said County had agreed unto it. Now what can here be meant by County but the Common Council, or Parliament thereof, since otherwise they could make no Laws, nor do any other publick Act?

The like I may say for the County Palatine of *Durham*, which from the Grant thereof by *William Rufus* to the then Bishop, had always been taxed by themselves, and not by the Bishop in Parliament, and that as low as the Reign of *Edward* the Third; as appears by this Record of the 14th of that King; containing a Letter or Commission to R. Bishop of *Durham*; reciting, " That whereas the Prelates, Earls, Barons and the Commons of Counties, " had given him a 9th of their Goods there mentioned, that therefore the

Rot. Aleman
14 Ed. 3. m. 9.

Bishops

" Bishops should convene the *Magnates & Communitatem Libertatis vestre* (to wit, of his County *Palatine*) *ad certum diem, & locum*, with all convenient Speed; and that done, to persuade and excite the said *Magnates & Communitas*, to grant the King the like, or a larger Subsidy, towards the Maintenance of his Wars; which had been altogether in vain, if the Bishop, or the King could in those Days have Taxed this County at their Pleasure.

Now if these great Tenants *in Capite* could not Tax their Mesne Tenants without their Consents, much less could the rest of the Tenants *in Capite* in *England* impose Taxes on their Tenants in Military Service, or in Socage, without their Consents, which last had a much less Dependence upon them.

M. I must confess I never considered these Precedents of the County *Palatine* of *Chester* and *Durham*; and therefore can say nothing to them at present, since it is Matter of Fact; but as to Reason and Law, I think it is consonant to both, that not only Tenants in Military Service, but Socage Tenure, should be bound by the Acts of their Superior Lords, of whom all the Lands of *England* were formerly held by Knights Service: And though in Process of Time many of these Estates and Lands became free Tenements, or were holden in Socage; that is, were a sort of Freeholders; yet the Lords retained Homage (which in the Times we now write of, was no idle insignificant Word) and by that a Dominion over the Estate; whereby upon Disobedience, Treachery, or Injury done to the Lords, &c. the Lands were forfeited to them. And although the Lands, nor the Tenants of them (which were termed Freeholders) were subject to any base Services, or servile Works, yet the Lords had a great Power over these Tenants, by reason of their doing Homage to them (which though now antiquated) yet *eo nomine*, their Lands were many ways liable to Forfeiture, and Taxes too.

B. A P.
Pag. 171.

So that upon all these Accounts, it was then as reasonable that the Tenants *in Capite* should in those Days make Laws, and grant Taxes for all the rest of the Kingdom; as the Tenants *in Capite* in *Scotland* should do so to this very Day, for all the Inhabitants of that Kingdom of never so great Estates; and to this Argument which is certain in Matter of Fact, you have yet answered nothing, nor do I believe can.

F. I cannot see, notwithstanding what you have now said, that the Superior Lords, by reason of Homage, should have an absolute Power over their Tenants Estates: For though in the Profession of Homage to the Lords, I grant the Tenant thereby promised to become the Lord's Man; yet he never thereby meant to become his Slave; and there were mutual Duties on both Sides; so that if the Lord failed to protect his Tenant in his Estate, or unjustly oppressed him, he might have refused (nay renounced) his Homage, till the Lord had done him right; nor can I see how a bare Right of having the Forfeiture of the Estate in the Cases you have put, which yet let me tell you, were never so strict in respect of Socage as Military Tenure, as I could shew you, were it worth while; for if this Right of Forfeiture alone, could give the Superior Lord a Power over his Tenant's Estate, to make Laws for him, and Tax him as he pleased, then by the same Rule, the King as Supreme Lord over all his Tenants *in Capite*, should have had the like Power over them, of making what Laws for them, and imposing what Taxes he pleased upon them, without their Consents; and so there would have been no need of Common Councils or Parliaments at all, since upon your Hypothesis, the Tenants *in Capite* were the only Persons that had any Right to appear there. But if neither the Wardship, Marriage, nor Relief of the Heir, could give the King such a Power over his Tenants *in Capite*, much less could they attain the like Right over all their Mesne Tenants by Knights Service; for that would have given them a greater Power over their Tenants than the King himself had over them; therefore if those great Tyes of Wardship, Marriage and Relief of the Heir, could neither give the King, nor yet any Tenant *in Capite*, Power over the Estate or Liberty of his Tenants by Knights Service, much less over their Tenants by Socage Tenure, who were not under this Subjection. And farther, if a Right of Forfeiture alone,

in some Cases, could have given the Lords a Power of making Laws, and granting Taxes for his Tenants *in Socage*, then they should have still kept that Right by this Rule, since all Lords had a Right of Forfeiture even upon their Tenants in Socage in some Cases, before the Statute of taking away Knights Service, and the Court of Wards, and Liveries, in the Second Year of King *Charles* the Second; as I could prove, were it worth while.

*Vid. Chart.
Fundat. Monast.
de Dunferling.*

*B. A. P. p. 96.
Et de iur. Statut.
Williel. Reg.
Fol. 2. Cap. 7.*

*Stat. Alexan.
Reg. Fol. 22.
Cap. 2.*

*Stat. Rob. I.
Fol. 29.*

Chap. 24.

*Rot. Pav. 17.
E. M. 4.*

*Rot. Pav. 18.
E. 1. M. 9.*

As to *Scotland*, I shall not deny the Matter of Fact to be as you say, that it hath at this Day no other Representatives in their Parliament, but the Tenants *in Capite*; yet whether it was so or not anciently, I very much doubt; since I find the very same Words and Phrases made use of in the Titles of their old Statutes, as also in their Records, to express the Constituent Parts of the great Council of that Kingdom, as were used in *England*, to express those of *England* at the same Time. For Proof of which, pray see the old Charters of King *Malcolm* III. and *David* I. as you may find them at the end of the Second Volume in Mr. *Dugdale's Monast. Anglic.* and you will see the former to have been made by the Assent of the *Comites & Barones Regni, Clero adquefcentique Populo, &c.* and as I shall also shew you from Sir *John Skene's* Collection of *Scottish* Laws; to begin with the most Ancient there Extant, (*viz.*) an Assize or Statute made in the Time of King *William*, surnamed the *Lion*, who began his Reign *Anno Dom. 1105.* in the Fifth of our *Henry* I.; to the Observance whereof it is there expressed, that the *Episcopi, Abbates, Comites, Barones, Thani, & tota Communitas Regni tenere firmiter juraverunt.* So likewise King *Alexander* II. who began to Reign *Anno 1214*, which was the Sixteenth Year of our King *John*, and he made his Laws *de consilio & assensu venerabilium Patrum Episcoporum, Abbatum, Baronum, ac proborum hominum suorum Scotie*, and who these were, may also farther appear by the beginning of certain Statutes made by the said King *Alexander* in the same Year, which begin thus, *Statuit Rex per consilium & assensum totius communitatis sue. &c.*

I shall next produce the Title of a Parliament holden the 12th of *Robert* I. who began his Reign *Anno Dom. 1306*, in the Third of our *Edward* I. *In Dei nomine, Amen. Robertus Dei Gratia Rex Scotorum Anno Regni suo Decimo tertio die Dominica proxima, &c. habito solenni tractatu, cum Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & aliis Magnatibus de Communitate totius Regni ibidem congregatis;* and which Title concludes thus, *de Communi consilio & expresso concensu omnium Prelatorum, & liberi Tenentium predictorum ac totius Communitatis predictae ordinavit, condidit, &c. Statuta infra Scripta, &c.* So likewise in an ancient Manuscript, called, *Scoto Chronicon*, formerly in the Possession of the Right Learned and Honourable *Arthur* Earl of *Anglesey*, and now in the *Herald-Office*, you will find the Entail of the Crown of *Scotland* to have been made by this King *Robert*, *Anno Dom. 1315*, in a general Council or Assembly of the whole Kingdom of *Scotland*, as well Clergy as Laity, which as this Author tells us (who lived within Sixty Years after) was held, *Dominica proxima ante festum Apostolorum Congregati apud Aere in Ecclesia Parochiali ejusdem Laici, Episcopi, Abbates, Priores, Archidiaconi, nec non Diaconi, & ceteri Ecclesiarum Prelati, Comites, Barones, Milites, & ceteri de Communitate, Regni Scotie, tam Cleri quam Laici, &c.*; from which it is apparent, there was a great Council of the whole Kingdom (as in *England*) more comprehensive than that of Tenants *in Capite* alone.

And that our *English* Records also agree with these *Scotch* Statutes, you may see by Two Records which Mr. *Pryn* has given us in his History of *Papal Usurpations*, out of the Rolls of the 17th of *Edward* I. It is a Letter to *Eric*, King of *Normy*, concerning the Marriage of his Son *Edward*, with his Grand-daughter, then Heiress of *Scotland* and *Norway*, reciting that the *Custodes (Scil. Regni Scotie) Magnates, Prelati, ac tota Communitas predicti Regni Scotie unanimi, & expresso consensu*, had agreed to the said Marriage. So likewise in another Letter of this King *Edward's* about the same Marriage, he declares that he had by his Procurators therein named, treated and agreed with the *Custodibus, Episcopis, Abbatibus, Comitibus, Baronibus, & tota Communitate ejusdem Regni*; and it presently follows, *ac predicti nobiles & tota Communitas Regni Scotie predicti*, Now whom

whom can this Word *Communitas* signify, put here distinct from the Earls, Barons, and Nobles, but the Commons of that Kingdom?

So likewise in the Fourteenth Year of King Robert the First, there was a Letter sent from the Parliament of Scotland to the Pope, complaining against the Violence of the King of England (which is to be seen in Manuscript, and is also Printed by Dr. Burnet, in his History of the Reformation) and by which it plainly appears, that the *Comites, Barones, Liberi Tenentes, & tota Communitas Scotiæ*, agreed to this Letter. An. Dom. 1320.
Part 2. Fol.
109. N. 10.

And that the Cities and Borough Towns were at that Time Part of this *Communitas*, appears by the League made between this King Robert and the King of France, in the 28th Year of our Edward the First, which is to be seen in a Roll of this Year, still Extant in the Tower; which League was ratified and confirmed in their Parliament, by King John de Baliol, ac *Prælatos, & nobiles Universitates, & Communitates civitatum, & villarum prædicti Regni Scotiæ*; and I suppose you will not deny that in Scotland, the Cities and Boroughs from Times beyond all Memory, sent their Proxies and Representatives to the Parliament in Scotland, and that each Citizen and Burgeſs ſo ſent, had as good a Vote in their Parliament, as the greateſt Biſhop or Earl of them all. P. R. C. p. 83.

M. I deſire no better Proofs than what your ſelf have now brought to make out, that the Tenants in *Capite* are not only at this Day, but have been from the very beginning of Parliaments in that Nation.

For I ſhall appeal to thoſe very Statutes and Records you have now cited, which compared with divers ſubſequent Statutes of that Kingdom, will make the Matter plain enough, that the *Communitas*, and theſe *probi homines* mentioned in theſe Laws you have cited, were the Community of the Tenants in *Capite* only.

In the Firſt Place, therefore, let me obſerve from that very Law of King Alexander's, the Title of which you have but now quoted, that theſe Words *per aſſenſum Communitatis* cannot here ſignify the Commons, ſince they alone could neither adviſe, nor give their Conſent to make Laws, and therefore they muſt needs refer to the whole Community or Aſſembly of Eſtates, conſiſting of Tenants in *Capite* only; as I ſhall prove by a Parliament of King Robert III. who began to Reign Anno Dom. 1400, (in the 10th Year of our Richard II.) the Title is thus, *Parliamentum Domini noſtri Roberti III. Scotorum Regis, &c. vocatis & ſummonitis more ſolito Episcopis, Prioribus, Ducibus, Comitibus, Baronibus, Liberis Tenentibus & Burgenſibus qui de Domino Rege tenent in Capite*; and this is alſo confirmed from the Title to a Parliament held at Perth, Anno Dom. 1427, being the 23d of King James I. *Summonitis & vocatis more ſolito Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & Liberi Tenentibus, qui de nobis tenent in Capite, & de quolibet Burgo certis Burgenſibus*. So that I think nothing can be plainer from theſe Ancient Statutes, than that the *Scotiſh* Parliaments did anciently conſiſt of no other Members than the Biſhops, Abbots and Priors, Dukes and Earls, Barons, Freeholders and Burgeſſes, which held of the King in *Capite*. B. A. P. p. 68.
Stat. Rob. 3.
Fol. 63.

Having thus ſhewn the Ancient Conſtitution of the *Scotiſh* Parliaments, for your Satisfaction, I ſhall farther ſhew when, and how it was altered.

In the Seventh Parliament of King James the Firſt, held at Perth, Anno Dom. 1420, there was a Law made (which I ſhall contraſt) " That the ſmall Barons " and Freeholders need not to come to Parliaments, and that for the future out of " each Sheriſſdom there ſhould be ſent Two or more wiſe Men after the Large- " neſs of the Sheriſſdom, the which ſhall be called Commiſſaries of the Shire; " and that theſe ſhould have full Power finally to hear and determine all Cauſes " to be propoſed in the Great Council or Parliament; and that the ſaid Com- " miſſaries ſhould have Coſtage of them of each Shire that ought to appear in " Parliament or Council. I have only given you an Abſtraſt of this Statute, be- cauſe it is pretty long, and penn'd in old *Scotiſh* Engliſh, but you may conſult it at your Leiſure. Statut. Jacob.
I. ibid.

And this is farther confirm'd by a ſubſequent Act of Parliament of King James the Sixth, holden at Edinburgh, July the 29th, 1587, wherein after a Repetition

of the former Act of King *James* the first, and a Confirmation of the same, it follows thus:

“ And that all Freeholders of the King, under the Degree of Prelates and “ Lords of Parliament, be warned by Proclamation to be present at the chu- “ sing of the said Commissioners; and none to have voit in their Election “ but sikk as hes Fourtie Shillings Land in free tenandrie halden of the King, “ and hes their actual Dwelling and Residence within the same Schire &c.” I need give you no more of this Act; but I think it is most clear from this as well as the former Act of Parliament, that the Commons in *Scotland* were only the King’s Tenants *in Capite*, and are so at this Day; since none but they can either chuse or be chosen Commissioners for the Shires. But as to the Boroughs, who do each of them send but one Commissioner or Burgeses (except the City of *Edinburgh*, which sends two) all which are chosen by the Common Council of the Towns; now there are in *Scotland* three sorts of these Burghs, that is to say, Royal Burghs, Burghs of Regality, and Burghs of Barony; but only the Royal Boroughs, the *Burgi Domini Regis*, or *qui de Rege Tenent in Capite*, send Commissioners to Parliament, and are in Number Sixty.

Vid. Present Stat. of Scotland, p. 17.

Ibid. p. 100.

To conclude, That I may apply what hath been said concerning the Constituent Parts of the *Scottish* Parliaments to ours Anciently, it seems to me, that from the great Affinity there was between ours and theirs, ’tis certain, that our and their *Communitas Regni*, was the same, that is, they were the small Barons and Tenants *in Capite*.

F. I cannot deny but that the Parliament of *Scotland* hath, for above these Two Hundred Years, consisted of the Bishops, Abbots, and Temporal Lords, together with the Lesser Tenants *in Capite*, or their Representatives the Commissioners for Shires, and Burgeses of Cities and Towns, till the Reformation; that the Bishops and Abbots were quite taken away; tho’ the former were restored to their Places in Parliament, by a Statute made in the latter end of King *James* the First; yet I cannot allow, that from the beginning of that Government, the *Scotch* Parliaments have consisted of no other Members than those; since the Word *Communitas* coming, as it does in these old Statutes and Records (I have now cited) immediately after the *Prælati, Comites, Barones, & Milites*, &c. must signify a Distinct Order of Men from the Tenants *in Capite*, called in the Statute of King *James* the First, the small Barons, and since the Citizens and Burgeses, though none of those Barons, were also comprehended under this *Communitas* (and whom you grant to make the Third Estate,) why this Word might not comprehend all the other great Freeholders, I can see no Reason to the contrary.

And therefore I suppose, that in the Reign of King *David* the Second, or *Robert* the Second, or else the beginning of *Robert* the Third, there was a great Alteration in the constituent Parts or Members of the *Scottish* Parliament: And about that Time, the Chief Freeholders, or Lords of Manors, who held of Bishops, Abbots, and other Temporal Lords, as well as of the Tenants *in Capite*, or else of the King, by petty Serjeanty, or Socage Tenure; as also many of the small Towns, or Baronies, might either forbear coming at all, or else desire to be excused, because of the great Trouble and Charge of Attendance; (as you see the smaller Tenants *in Capite* afterwards did, when Commissioners for Shires were appointed in their steads) and so might by Degrees leave off coming, or be excluded by some Law not now Extant. And thus the Tenants *in Capite*, might become the sole Representatives of the whole Nation in Parliament. And I am of this Opinion, because in many of the old Statutes before the Time of *Robert* the Second, we find the *Communitas totius Regni*, coming immediately after the Earls and Barons (as in our own Ancients Statutes and Records;) but after those Reigns, we find no more mention of this *Communitas*, but only of the Dukes, Earls, Barons, *Liberi Tenentibus, & Burgensibus, qui de Rege Tenent in Capite*, as in the Titles to those Statutes of King *Robert* the Third, and *James* the Fifth, you have now cited.

And yet that *Liber Tenens* was not anciently taken for a Tenant *in Capite* only, pray see the 14th Chap. of the Laws of King *Alexander* the Second, made *Anno Dom. 1214.* with your Doctor’s Comment upon them; *Statutum est quod*

quod nec Episcopi, nec Abbates, nec Comites, nec aliqui liberi Tenentes, tenebunt curias suas nisi Vicecomes Regis, vel servientes Vicecomitis ibidem fuerant. B. A P. p. 98.

Upon which Words, the Doctor in his Answer to Mr. P. hath this Remark, *viz.* This again shews us, that the Freeholders were Lords of Manors at least. So that unless you will suppose that none but Tenants *in Capite* were Lords of Manors, or held Courts, (as certainly very many of the Meine Tenants did) this Word *Liber Tenens* must extend to any other great Freeholder or Lord of a Manor, of whatsoever Lord he held it; and as such might anciently have had a Vote in that Parliament. So that if I have (as I think sufficiently) proved that the Word *Communitas* coming after the Earls and Barons, in our ancient Statutes and Records, did certainly signify another Order of Men distinct from the Tenants *in Capite*, I have the same Reason to believe it was so in Scotland too; not only because these general Words *Communitas totius Regni*, must needs be more comprehensive, than to express the Tenant *in Capite* only, (who could never Represent all the great Freeholders in Scotland any more than they did in England) but also because it is acknowledged by the Scotch Lawyers, that the Fundamental Laws and Constitutions are the same in both Kingdoms. For Sir John Skene in his Epistle to King James before his Scotch Laws, says thus, *Intelligo tuas tuorumque Majorum leges, cum legibus Regni tui Anglie magna ex parte consentiunt*; which is also acknowledged by the King himself in the Speech he made in Parliament concerning the Union of both Kingdoms.

To conclude, I cannot but admire your Doctor's strange Partiality, who does allow the Commons of Scotland to have even been a Third Estate, when he expressly grants, that, "*The Commons of Scotland were, and are at this Day, the King's Tenants in Capite; and that the King's Royal Boroughs were such as ever did, and do at this Day in Scotland, only send Burgeses to Parliament*:" Now why the Cities and Boroughs in England should not have always had the like Privilege, as well as in Scotland, I wish you could give me any sufficient Reason.

M. Since you own that the Tenants *in Capite*, or else Commissioners in their stead, have been the sole Representatives for the whole Kingdom of Scotland for above 200 Years, I doubt not but they were so, long before that Time; since you confess you cannot shew any Law by which this Ancient Custom came to be changed; though I grant, that the Statutes before King David and Robert the Second, are said to be made by the *Communitas totius Regni*, yet you must not suppose that Constitution of the Kingdom altered, when the Clerks altered their Phrases in penning their Statutes and Records; so that this *Communitas* was the Community of the Tenants *in Capite* only, and not of the Freeholders, or of the Citizens and Burgeses of the whole Kingdom; since as for the former, you cannot say, that all the People in Scotland had ever a Right to chuse the Commissioners for the Shires: For then 'tis most likely they would have kept it to this Day; whereas we see that none but Tenants *in Capite* have Votes at such Elections.

And as for Cities and Boroughs, I cannot find (nor do I believe you can shew me) any Instance of a City or Borough-Town in Scotland that ever sent Deputies to Parliament, but what held *in Capite* of the King. For though there are, as I said already, besides the Royal Burghs, two other sorts, *viz.* Boroughs of Regality, and Boroughs of Barony, who hold of the King, but not *in Capite*, or else of some Bishop or Temporal Lord; and though divers of these are considerable for Trade and Riches; yet none of them send any Burgeses to Parliament: So that though I confess there are Three Estates in the Scotch Parliament, called in the Statutes of King David and Robert the Second, the *Tres Communitates Regni*; yet did these always consist of the Tenants *in Capite* only, who therefore sit together and make but one Assembly.

Now that we may apply what hath been said to England, I desire you to take Notice, that the Doctor and we that are of his Opinion, do not positively affirm, that the Commons of England were not at all represented before 49 of Henry the Fourth, but that they were not represented in Parliament by Knights, Citizens, and Burgeses of their own Choice, but by the greater and lesser Tenants *in Capite*, the greatest part of which I grant were not Lords. And admit that

that I should grant you that some Cities and Boroughs sent Members to Parliament, before the 49th of *Henry* the Third; yet were they only such as held *in Capite*, and no other, as the Doctor has very well observ'd in his Answer to Mr. P's Argument from the Petition of the Town of *St. Albans*. So that upon the whole Matter, there will be no more gain'd by you in this Controversy, than that perhaps some Citizens and Burgessees appeared in Parliament, and constituted a Third sort of Men, which you may call the Commons, if you please, though I cannot find they were so called, till after the Time of *Edward* the First. But supposing this to be so; it is very far from your Republican, levelling Opinion, who do suppose, that all the Freeholders of *England*, had an ancient indisputable Right of appearing in Parliament by Reason of their Propriety in Lands, or other Estates. Whereas by our Hypothesis, we suppose the Great Council or Parliament to have anciently been the King's Court-Baron, consisting of his immediate Tenants, call'd thither by him their Supreme Lord, to advertise him of the Grievances of the Nation; and to propose what new Laws were necessary for the Publick Good of the Commonweal; and together with him to raise such publick Taxes, both upon themselves and their Tenants, as the Necessities of the State required; yet notwithstanding, there is a vast difference between your Notion and mine, concerning the Rights which such Tenants *in Capite* might claim of coming to Parliament; since before King *John*'s Charter, (whereby I grant all the Lesser Barons or Tenants *in Capite* were to be Summon'd by the Sheriff to come to the Common Council of the Kingdom) the King might have only call'd some of the greatest and wisest of them, and such as he thought most fit to advise him in making Laws, and imposing Taxes upon the Nation. And the like Prerogative his Son *Henry* the Third resum'd during the greater Part of his Reign, as I shall shew you from divers old Statutes by and by. And that our Kings did often take upon them to call whom they pleased, and omit whom they pleased of these Tenants *in Capite*, may appear by those who were called *Pares Baronum*, or *alios Magnates*, who are put after the Barons; and of these there are many Instances of their being called to Parliament, and again omitted in several King's Reigns after the Commons were a Third Estate, as represented as at this Day.

B. A. P.

F. I must beg your Pardon, if I cannot come over to your Opinion, notwithstanding what you now have said; since I do not find your Reason to come up to what you intend therein; for you only suppose, (but without any Proof) that the Words *Populus* and *Communitas* must signify only Tenants *in Capite*, in the Ancient *Scotish* Charters and Statutes. All the Argument you bring to the contrary is, that I cannot shew you any Law by which it was altered to what it is now; and therefore, that the Constitution has been always the same as at this Day. Now pray consider, whether this will not press altogether as hard upon in your relation to *England*; for you cannot shew me any Law whereby the Tenants *in Capite* were excluded here, and Knights of Shires introduced in their steads; and therefore, by the same Rule, let the *Scotish* Parliaments have been of what they will, yet ours have been still the same they are now. But if you say, that this contrary Usage hath been introduced, either by the King's Prerogative, or by the silent Consent of the People; or by some Law that is now lost, are not all the same Arguments to be made use of in the Case of the *Scotish* Parliaments: Which I may upon as good Grounds suppose to have deviated from their Original Constitution, as you do that our *English* Parliaments have done it.

So that if those Arguments are of any weight, they will serve for *England*, as well as *Scotland*; but if they are not, it is in vain to make use of them at all. The like I may say, as to Boroughs in *Scotland*; since it is as easy to suppose, that divers Boroughs in *Scotland* might voluntarily desist from sending their Deputies to Parliament, that did not hold of the King *in Capite*; as it is, that divers Boroughs in *England* did Petition to be exempted from sending Burgessees to Parliament, by reason of their Inability to pay the Expences of their Burgessees; as I could shew you by divers Precedents, (some of which are in Print) had I now Time.

As for the rest of your Discourse, I cannot imagine to what it tends; for if the Tenants *in Capite* had any Place in, or Right to come to Parliament, how came they to have it, but by reason of the great Freehold Estates they held of the King? And if so, I can see no Reason why those that had as good or better Freehold Estates than they, should be all excluded: Or why a small Tenant *in Capite* of but one Knights Fee held of the King *in Capite*, should give him a Right to a Place in Parliament; and yet that a Mesne Tenant, or *Vassal* (as he was then called) who held Ten Knights Fees of some Bishop or Abbot, who perhaps did not hold *in Capite* at all, should have no Right of appearing there, nor of chusing any Representative for him; since notwithstanding all you have now said, the Doctor either contradicts himself, or you, when he tells us expressly in his Answer to Mr. P. "That the Tenants *in Capite* who were no Barons, represented only themselves, and not the Commons. But how will this agree with what he says in his Introduction, that the Body of the Commons had no share in making Laws, &c. before the 19th of Henry the Third, unless they were represented by the Tenants *in Capite*? And if so must then certainly represent those that he here calls the Body of the Commons of England collectively taken.

B. A. P. p. 63.

But as for your Notion of the Parliament's being the King's Court Baron; tho' you have borrowed it of a learned Scotch Lawyer, Sir George Mackenzy, yet let me tell you it was never true; for it is well known that the Great or Common Councils both in England and Scotland are much more ancient than the Tenures of Lands by Knights Service; or than the very Institution of Manors in this Kingdom, which the Doctor tells us are of no higher an Original than the Norman Conquest.

But admit I should allow your Notion of the Parliament's being anciently the King's Court-Baron, then certainly all the Tenants *in Capite* had a Right to appear there, and to be not only Suitors, but Judges of all Differences arising among the Tenants in the Lords Court, where neither the Lord himself nor his Steward were Judges; and that of Right and not by Favour. Whereas you suppose such a Court-Baron as never was heard of, where the Lord could admit or exclude whom of his Tenants he pleased, to which if they had a Right *ratione Tenure*, certainly he could never do. So that instead of a Court-Baron and a Common Council according to King John's Charter, whereby all the Tenants *in Capite* were to be summoned to this Council, or pretended Court Baron; you suppose the King still retained a Prerogative of calling or omitting whom he pleased; which instead of confirming the Validity of the Charter, and that it was to be a Rule how such Councils should be called for the future; you make to signify just nothing, and that no Common Council was ever called according to that Model. But pray shew me a Court-Baron, wherein the Tenants ever took upon themselves a Power of giving Taxes out of their Estates, that did not hold of the Manor, though they were resident within it. But indeed you are out in the whole Matter, for the Doctor himself grants in his Answer to Mr. P. when "he gives us King John's Letters of Summons to a Council directed to the Barons and Knights (and as he translates *Fidelibus*) Feudatories, or Vassals of all England, wherein he lets them know, that he had sent his Letters to every one of them, if it might have been done". Now what Reason had he to write thus, if these Gentlemen had no Right to be consulted, or that the King might have called or left out whom of them he pleased? But the Barons, or Tenants *in Capite* were of another mind, when in the 37th of King Henry the Third, as *Mat. Paris* tells us, they refused to Act or Proceed upon any Thing, without all the rest of their Peers; divers of whom, it seems, the King had for some Reasons then omitted to summon.

B. A. P. p. 40.

But as for your Instance of the Barons, Peers, or *alios Magnates*, which were sometimes summoned, and sometimes omitted in the Reigns of our Three Edwards; you do well to put in, that it was after the Times that the Commons were a Third Estate; for indeed, it was only after that the Tenants *in Capite* had left off making a distinct Council by themselves; which I suppose was about the End of the Reign of Henry the Third; and then it is true, the King called several of these Tenants *in Capite*, (as also others that

were

were not so) by Writ, to the House of Lords, as *Pares Baronum*, i. e. not as real Barons, but Baron-Peers, since a bare Summons by Writ did not as yet (nor long after) vest a Peerage in their Heirs. So that upon the whole Matter, I see no Reason from any Thing you have urged from the Example of *Scotland*, to make me change my Opinion, that the Tenants *in Capite* were anciently the sole Representatives, either of this or that whole Nation in Parliament. For pray take Notice that I do not find the Tenants *in Capite* so much as mentioned in the ancient Statutes of that Kingdom, or Charters of their Kings, as the Common Council or Parliament of *Scotland*, before the Reign of King *Robert* the Third, which was but late in Comparison of the Antiquity of those Councils in that Kingdom.

M. I could say more as to the Antiquity of the Tenants *in Capite*, their coming to Parliament as the sole Representatives of the Nation, before the Time you mention; but it grows late, and therefore I shall wave it at present, and so shall only proceed to remark that great Part of the Error of the Gentlemen of your Opinion, proceeds from this false Ground, that you suppose that the Parliaments both of *England* and *Scotland* were a perfect Representative Body of all the Freeholders and Freemen of those Kingdoms; which is a meer Chimera. For in the first Place, if we will consider, it never was, nor indeed is so at this Day; since you your self must acknowledge, that all Copyholders and Leaseholders under Forty Shillings a Year, all Freemen in Towns Corporate, where the Election lies wholly in the Mayor and Aldermen or Common Council; and lastly, all that will not pay Scot and Lot in divers Borough Towns, are utterly excluded from giving their Votes in the Choice of Parliament Men; and consequently from having any Representatives in Parliament, though sure as much Freemen as the rest of the Kingdom: And this either by general Statutes, or else by the particular Charters and Customs of those Cities, Towns and Boroughs; all which are looked upon as good and lawful Representatives of those Cities and Boroughs. So that I am clearly of the Doctor's Opinion, that the Tenants *in Capite*, as well those who were Barons as those that were not, only represented themselves, and not the Commons, as being (as you truly observe) never chosen by the People. And as no Man can believe that a great Lord or Bishop could represent his Mesne Tenants, so neither could the smaller Tenants *in Capite* who were no Barons, be properly said to represent theirs; and yet, these might according to the Custom of Feudal Tenures, and the Power they then had over their Tenants Estates, very well make Laws for them, and tax them at their Pleasures; because the main Interest and Strength of the Kingdom lay almost wholly in them; and these (as the Doctor very well observes) having the Power of this, or any other Nation *de facto*, always did make Laws for, and Tax the rest of the People.

But to say somewhat to the Authorities you have brought from the County *Palatines* of *Chester* and *Durham*; I know not what old Privileges they might pretend to, of not being forced to give voluntary Aids or Subsidies of their moveable Goods without their Consents; yet thus much I think may be made out, that as for all Land Taxes, and the general Laws and Statutes of the Kingdom, they were as much bound by the one, and as much liable to pay to the other, as the rest of the Subjects of *England*; or else how came they afterwards to be bound by our general Statutes at all, as certainly they were from all Times since the Conquest; though *Chester* had no Representatives in Parliament, till the Reign of *Henry* the Eighth, and *Durham* had none till our Times.

F. You Gentlemen who hold this general Notion of Tenants *in Capite*, are so intoxicated with it, that you do not care what Absurdities or Contradictions you fall into, provided you may maintain your dear Opinion, as I shall shew you by and by: But first let me tell you, your Reply to what I have now said, is very fallacious, and in some Points mistaken as to the Matter of Fact: For in the first Place, I doubt not but our Common Councils or Parliaments were in the first Institution, the main Body or Representative of all the Freemen of the Nation; and though it came by long Continuance of Time to deviate from that Institution; yet, that is to be attributed either
to

to some prevailing Custom, or else positive Law to the contrary; for I think it evident, that in the *Saxon* Times, all the Freeholders of *England* had a Right of coming to Parliament in Person; and hence it is, that *Liber Tenens*, *Liber Homo* & *Ingenuus*, were Synonymous, and of the same Signification, as I have proved from Sir *Henry Spelman's* Comment, in his Glossary upon those Words. And hence it is, that the Members of those Councils were so numerous as they were in those Times, and long after, till they became so vast and unmanageable, that they were fain by Degrees to pitch upon this Method of sending Knights of Shires to represent them; which is certainly a very ancient Institution, since the Tenants in Ancient Demean, claimed to be exempted from the Expences of Knights of the Shires by Prescription, as I shall shew you more particularly by and by; and likewise, since all Riches consisted in those Days in Land, or else in Stock, or Trade; therefore the Cities and Boroughs, and Towns, by Reason of their Riches, had always a Share in the Legislative Power, as well as in giving of Taxes. And since all such Citizens and Burgeses, not being able to come in Person, as the Freeholders could, were represented either by their chief Magistrates, called their Aldermen, or else by Burgeses of their own chusing, as at this day; so that all Freedom, or Ingenuity being in this, as in all other Commonwealths, reckoned *per censum*, by the Estates of the Owners; our Common Councils were, and that truly, the Representatives, not only of the Estates, but Persons of all the Freemen of the Nation. For I am so far of the Doctor's Opinion, that the *Cheerl* Folk (as they were then termed) were little better than the *Scotch* Vassals, or *French* Peasants at this Day, and so were not reckoned among the Freemen; all Freedom consisting then in so much Freehold Lands, held in a Man's own Right, or being Freemen of some City or Borough Town. And this gives us a Reason, why Copyholders and Tenants for Years, have no Vote in Parliament at this Day; since it is certain, (and all our Law-Books allow it) that at the first all Copyhold Estates were held by Villenage, and the Owners of them at first the *Villani*, or Tillers of the Demesnes of the Lord of that Town; there being at first no Freehold less than that of a whole Township, since a Manor; and therefore all Copy-holders and Tenants for Years, or at Will, though Freemen, are not admitted to have Votes at this Day, because (as I said before) Freedom anciently consisted in the Inheritance or Freehold Estate of Land, or in Riches in Trade or Traffick; Leases for Life and Years, being not commonly in Use in those Days. And hence it is, that when Estates of Freehold came to be divided into small Parcels, all Freeholders till the Statutes of *Henry IV.* and *VI.* (which we have before cited) were as much capable of giving their Votes at the Election of Knights of Shires, as the best and greatest Tenants *in Capite* in *England*, till it was reduced by those Statutes to 40 s. Freehold *per Annum*; these Freeholders and Burgeses of Towns being anciently looked upon in the Eye of the Law, as the only Freemen; and it was these Freeholders alone who owed Suit and Service to the County Court, and were amerced if they did not appear.

This being premised, and sufficiently understood, will give us a very good Account, why Copy-holders and Lease-holders for Years do not give any Votes at Elections of Knights of Shires; and yet the Parliament may still continue the Representative of all the Freemen of the Nation; as the People of *Rome*, and the Territories about it were of all the *Romans*, though there were a great many *Liberti*, and in *Inquilini* who sure were Freemen, and not Slaves, and yet had no Votes in their *Comitibus Centuriatis*, or general Assemblies of all the *Roman* Citizens.

But that the *Liberi homines*, & *Libere Tenentes de Regno*, must take in more than your Tenants *in Capite*, the Doctor himself is at last forced to confess in his Glossary (notwithstanding his maintaining the contrary in the Body of his Book) viz. that the *Liberi Homines*, & *Libere Tenentes*, mentioned in *K. John's Magna Charta*, were not only the Tenants *in Capite*, but their Retinue, and Tenants in Military Service also, and whom he there supposes to have been then the only Men of Honour, Faith and Reputation, in the Kingdom; and if so,

*Tit. Liberi
Homines &
Libere Ten*

might certainly have been chosen Knights of Shires, as well as any of the Tenants *in Capite*; though this is but *Argumentum ad Hominem*; for the Truth is, that the Mesne Tenants by Military Service, were not the only Men of Faith and Honour in those Times, since it is certain the King's Tenants in *Petyt Serjeanty*, and of some Honour or Castle, or else his Tenants in Soccage, besides those who held of other Mesne Lords, and the Tenants of those Abbots and Priors who did not hold *in Capite*, and yet were very numerous, were Men of as much Faith and Honour as those that did; since many of them possess'd as good, if not better Estates than the Tenants *in Capite* themselves. So that you are certainly mistaken in Matter of Fact, when you say the whole Force and Strength of the Nation lay in their Hands; for if you mean Legal Force, I have already proved, that the Tenants *in Capite* had no Legal Right to give away the Estates of their Mesne Tenants, or to make Laws for them without their Consents, who were altogether as free as themselves, *Servitiis suis debitis solummodo exceptis*, as *Erastus* tells us, much less for so great a Body of Men as I now mentioned, who never held of them at all, and consequently could not upon your own Hypothesis, be ever represented by them. But if you mean a Physical Strength or Force; though this can give no Natural, much less Legal Right for one Man to Lord it over another; yet even this was much farther from Truth, since the Mesne Tenants of all Sorts, as well by Military Service as in Soccage, together with those above-mentioned, who never held of the Tenants *in Capite* at all, made Six Times a greater Body of Men, both for Numbers as well as Estates, than all the Tenants *in Capite* taken together.

But to conclude, neither is your Remark upon my Authorities from *Chester* and *Durham* at all to the Purpose; for I have sufficiently proved, that those County *Palatines*, were not at first concluded within the general Laws and Taxes of the Kingdom; since they had their particular Councils for both within themselves; as the Supplication of the Estates of the County *Palatine* of *Chester*, sufficiently declares; and certainly *Durham* had the like Privileges, since I never heard that the Men in that County were more Slaves to their Bishop, than the *Ceshire* Men to their Earl. And though I grant that about the confused Times of King *Henry VI.* there was a great Breach made on the Ancient Liberties of these Two Counties *Palatines*; and if the King and Parliament made Laws for, and Levied Taxes upon them, though they had no Representatives therein, this proceeded partly from their being over-powered by the rest of the Nation, and partly by the Ease they found in being excused from the Expences of Knights of Shires, and Burgeses, which all the rest of the Kingdom was at that time liable to, and which came to a great deal of Money (Four Shillings *per diem*, being in those Days, more than Forty Shillings now.) And yet you see at last they were aware of their Error, and at their Request, got the Privilege of having Representatives in Parliament of their own chusing, as well as the rest of the Kingdom. And if this had not been a Right claim'd by *English* Subjects, how came the *Welsh* Counties, which were anciently no part of the Kingdom of *England*, to have been admitted to chuse one Knight for each County, and Burgeses for each Borough Town, as well in *North-Wales*, as *South-Wales*, though both these were Conquered Countries at the first, and incorporated to *England* by particular Statutes? And therefore we have no Reason to deny the Truth of *Bracon's* and * *Fortescue's* Assertion, that no Laws are made, nor Taxes imposed in *England*, *sine consensu communi totius Regni*; or as the latter truly adds, *in Parlamento*; and certainly this Word common Assent must take in all their Assents, who had Estates either in Land, or other Riches, at that Time when this Law was Established.

* *Vid. Fortescue de Laud. Leg. Ang. Cap. 36.*

But leaving this Dispute about *Scotland*, and the County *Palatines*, pray make an end (for it grows late) and give me the rest of your Reasons, why the Commons could not be represented in Parliament before the 49th of *Henry III.* and 18th of *Edward I.*

M. I will proceed to do it, and for this End shall reduce my Arguments to these Five Heads. The First is, some Writs found out and produced by the Doctor, whereby he proves that the Commons were not summoned during the Reign of *Henry the Third*, till the 49th. Secondly, The general Silence of all Statutes in *Henry the Third's* Reign; wherein is not one Word mentioned of the Commons, but rather to the contrary. Thirdly, The critical Time (*viz.* in the 49th of *Henry the Third*,) when the Commons were first called, during *Montford's* Rebellion. Fourthly, Their Discontinuance from that Time, till the 18th of *Edward the First*, there being no Mention made of them in all the rest of the Reign of *Henry the Third*, nor yet of *Edward the First*, till the 18th; in which the Doctor shews you a Writ (not taken notice of before) by which the Commons were Summoned anew to Parliament: Lastly, From the uncertainty of the manner of the Writs of Summons, whether for one Knight or Two Knights, and sometimes no Citizens and Burgeses at all; which sufficiently prove the Novelty of the Institution, as also of some Parliamentary Forms relating to the Commons, which shew that neither their Number, nor Manner of Election, was settled long after the Reign of *Edward the First*.

To begin therefore with the first Head. I know the Gentlemen of your Opinion make a great Noise about the loss, or rather defect of the Writs of Summons, and Parliament Rolls of all the Kings, till the 23d or 25th of *Edward the First*. So that we cannot be so well assured what was done in Parliaments of those Times, as we may be afterwards. Yet there are still some Writs of Summons extant upon the Close Rolls before and in those Times, by which the Bishops, Earls, and Barons, were Summoned to Parliaments, or Great Councils. And we have all the Close Rolls of King *John* and *Henry the Third*; on the *Dorses* of which, anciently, most of the Writs of Summons to the Commons in other Kings Reigns, are entred (few on the Patent Rolls, which we have likewise.) 'Tis therefore very strange, if the Commons were then represented by Knights, Citizens, and Burgeses, and Summoned to Parliament as at this Day, that there cannot be found any Summons to them upon these Rolls, as well as to the Lords.

B. A. P.
p. 87. *to dein.*

But the Learned Doctor hath, for our Satisfaction, found out Three Writs of Summons to the Lords, one in King *John's* Reign, and two other of *Henry the Third*. The first is in the Close Roll, 6th of King *John*, directed to the Bishop of *Salisbury*, which is needless here to be repeated *Verbatim*; only pray take Notice of the material Words of this Writ, where after the Cause of the Summons particularly express'd, it concludes thus, *expedit habere vestrum Consilium & aliorum Magnatum Terre nostre quos ad diem illum & locum fecimus convocari*. The Second is in the Close Roll of the 26th of *Henry the Third*, directed to W. Archbishop of *York*; wherein he is likewise Summoned *ad tractandum, Nobiscum una cum ceteris Magnatibus nostris quos similiter fecimus convocari de arduis Negotiis nostris statum nostrum & totius Regni nostri specialiter tangentibus*; with this Note underneath, *eodem modo Scribitur omnibus Episcopis, Abbatibus, Comitibus, & Baronibus*.

M. 3. dorso.

M. 13. dorso.

The Third is of the 38th of the same King, directed to *Boniface*, Archbishop of *Canterbury*; whereby he is Summoned to be at *Westminster* within Fifteen Days after *Hilary* next coming, before the Queen, and *Richard* Earl of *Cornwall*, about the Affairs of *Gascony*: And this very Council *Mat. Paris, Anno Dom. 1254.* calls a Parliament, to which all the *Magnates*, or Great Men of *England* came together; the Day of which Meeting he makes to have been the 6th of the Calends of *February*, being *St. Julian's* Day, and which fell out within Fifteen Days after *St. Hilary's* Day, which was that appointed for the Meeting of this Parliament by the aforesaid Writ of Summons. And who were the Constituent Parts of this Parliament, may be further made out by a Letter of the Queen, and Earl *Richard* to the King, then in *Gascony*, which is recited by *Mat. Paris*, in his *Additaments* in these Words; *Domino Regi Anglie, &c. Regina & Richardus Comes Cornubie Salutem, Recipimus literas Vestras ad Natale Domini proxime preteritum quod in Crastino Sancti Hillarii Convocaremus Archiepiscopos, Episcopos, Abbates, Priores, Comites, & Regni Anglie ad attendendum, &c.* Whereby it appears who were then the Constituent Parts or

Cl. 38. Hen. 3.
M. 14. dorso.
de Magnatibus
vocatis ad Con-
cilium.
B. A. P.
Pag. 92, 93.

Additament
F 189. N. 50.

Members of our *English* Parliaments, viz. the Archbishops, Bishops, &c. Earls, and Barons of the Kingdom. So that there is no such Universal Silence concerning the Constituent Parts of our Parliaments, as you and those of your Party suppose, from the Loss of the Parliament Rolls of those Times; most of which, though I confess are lost; yet there are enough left to satisfy any reasonable Person, that there were then no Commons in Parliament in the Sense they are now taken.

F. You cannot give me a better Demonstration of the Loss of the Parliament Rolls and Writs of Summons, than what you now offer; for if we have all the Close Rolls of King *John* and *Henry* the Third, on the *Dorses* of which you tell me the Writs of Summons use to be entered; then certainly those to the Lords were there enter'd also; and if so, how comes it to pass, that in above Eighty Years Time, in which there must be above Eighty Parliaments, you can shew me but Three Writs of Summons, and those only to as many Bishops, and to no Temporal Lords at all? If so be these were Parliaments and not great Councils of the Bishops, Lords, and Tenants *in Capite*, only, as I rather believe they were. For you rely too much upon your Doctor's Credit, when you alledge, that we have all the Close Rolls of King *John* and *Henry* the Third; which is a great Mistake; for I have had a Friend who has given me a Note of what Close Rolls are still Extant in those Reigns, and what are lost, which you may here see.

To begin with King *John*; pray observe, That all the Close Rolls of the first Five Years of his Reign are gone; and so they are in the 9th, 10th, 11th, 12th, and 13th; for certainly, there were some in those, as well as in the succeeding Years. In the next place, till the 18th, there is but one Roll left of each Year; but then there are Three; and after that, but one or two in a Year to the very end. Now pray tell me, how we can be assured, that there was not more than one Roll in every precedent Year, as well as in the 15th. The like I may say for the Reign of *Henry* the Third, which though I grant are more entire than those of King *John*, there being some left us of every Year, but the 23d; yet they are but a few; and for the greatest part but one in each Year; never but two in any Year in all this long Reign, unless it be the 39th, in which there are Four; which is very strange, that in so busy a Time, as most of this King's Reign was, there should be no more Rolls left: And therefore it seems very probable, that at least half are lost, and in which might be many Summons, as well to the Commons, as to the Lords. And if they are not lost, pray tell me what is become of all the Writs of Summons to your Lesser Tenants *in Capite*, who certainly often met in this long Reign according to King *John*'s Charter. But if you will tell me they are lost, or omitted to be entered upon the Close Rolls, I may with like Reason and Certainty affirm the same of the Writs of Summons to the Knights, Citizens, and Burgeses; for if the one may be lost, sure the other may be so too.

But what if after all, these Writs you have produced were not any Summons to a Common Council, or Parliament at all; but only to a Great Council of the Tenants *in Capite*? Which I have great Reason to believe, not only because the Title to the last Writ is only *Summonitio ad Concilium*, and not *Commune Concilium Regni*; but also because Mr. *Selden* and Mr. *Pryn*, who certainly must have seen all these Writs, as well as the Doctor, and were as able to judge of them, never cite them for Summons to Parliament; And Mr. *Pryn* observes of several Writs, in which the like Words of Summoning the Lords to give their Advice, are likewise found, that they were only to such Councils, or *Colloquia*, or Treaties, which were frequently used as low as the Reign of *Richard* the Second. But if these Writs had been Summons to Parliament, sure Mr. *Selden* and Mr. *Pryn* had no Reason to bewail (as they so often do) the Loss of not only Parliament Rolls, but all Writs of Summons, both of Lords and Commons, (except those of 49th *Henry* the Third,) till the 23d of *Edward* the First. But pray go on, if you please, to make good the rest of the Positions you have now laid down.

M. I doubt not but in the next place to shew (though 'tis true most of our Parliament Rolls are lost) both from our Ancient Historians and Statutes, that there

there were no Commons in any Parliament, during all the long Reign of King Henry the Third, except in the 49th of that King.

I shall begin with the first Act of Parliament we have of the Time of Henry the Third, which was made in the 20th of this King, at *Merton*, where though it is said, *To be provided and granted, as well by the Archbishops, Bishops, Earls, Barons, as others*; yet the Words *& Aliis*, and others, are to be understood of the Tenants in *Capite*, distinct from the Earls, and Barons, as I have already proved.

F. I shall Answer your Authorities as you go. You may say you have proved it, but I know not when. And why may not I with as good a Face maintain, that these Words *& Aliis* do here signify the Commons; if the Word Barons must take in all the Great Lords and Lesser Tenants in *Capite*, as sometimes you suppose it doth, when no other Lay-Members are mentioned? But I have already observed, that this *Barones* is a Cheveral Word, and to be stretch'd, or contracted, as best suits with your Hypothesis. So I think I may with greater Reason suppose the Earls and Barons, to be all comprehended under the Word *Barones*, and the Commons under *Aliis*, as I have already proved; and which is also most suitable to the last Clause of *Magna Charta* of King Henry the Third. But you forget that I have, I think, sufficiently made out, that the Commons had their Representatives, both at the making and confirming of *Magna Charta* in the 2d and 9th of Henry the Third; and therefore whatever Proofs you bring to the contrary, will come too late; though I shall patiently hear what you have to say. But if you have no more Authorities to produce from Statutes and Records, which have not been already considered, pray proceed to the 49th of this King's Reign, and give me some Reasons why the Commons were called in that Year, and never before nor after, till the 18th of Edward the First; for they both seem to be very improbable Suppositions.

M. I shall observe your Commands, and shall give you as short an Account as I can of this Transaction. First therefore, I desire you to take Notice, That after *Simon Montfort*, and the rest of the Barons of his Faction had taken King Henry the Third, and *Richard* Earl of *Cornwall*, the King's Brother, with many other of the Nobility, Prisoners at the Battel of *Lewes*; he carried them about with him, till they had taken in all the strong Forts and Castles of the Land; and when this was done, *Mat. Paris* tells us, that calling together at *London*, the Bishops, Earls, and Barons of that Faction, which so seditiously held their King Prisoner; they began to set up a Committee for the Government of the Kingdom, consisting of Twelve Lords, who were chosen out of the whole Community or Body of the Baronage, without whose Advice and Consent or at least of Three of them, no Affairs in the King's Household, or in the Kingdom, should be transacted; and to these Ordinances, the King and his Son were forced to agree. And though the Record of this Agreement recites, that this Ordinance was made at *London*, by the Consent, Good-liking, and Command of the King; and also of the Prelates, Barons, and of the Community there present; yet I am not convinc'd, that by the Word *Communitas* in the *Latin* Record, is to be understood the Commons, but the Community of the whole Kingdom; since this Agreement is Signed only by some Great Earls, and Barons, and no Commoner Witness to it, but the Mayor of *London*, whom your self will grant was no Parliament Man.

After which, *Simon Montfort*, the better to settle himself in his Usurp'd Power; and in those Lands and Castles which himself and those of his Faction had unjustly wrested from Prince *Edward*; who was now also a Prisoner, having delivered himself as a Hostage for the Performance of this forc'd Peace; they in the first place sent out Writs in the King's Name, unto divers Bishops, Abbots, and Priors, and to such of the Noblemen as were of their own Party, to appear at *Westminster*, on the Octaves of St. *Hillary* next ensuing; and the Doctor hath given us a Copy of the Writ of Summons to the Bishop of *Durham*; as it is found in the Close-Rolls of the 49th of this King; and at the end of it, it is thus recited, *codem modo Mandatum est Episcopo Cantuariensi*. As also to divers Bishops, and Abbots, all of their own Party and Faction; there being above an Hundred Abbots and Priors then Summoned (more than were ever I believe, before or since); and then follows a short Writ to the

Sheriffs

B. A. P.
p. 134. & de n.

Rat. Pat. 48.
Hen. III. M.
6. Dorjo.

B. A. P.
pag. 137.
Rot. Claus. 13.
Hen. III. M.
11. Dorjo. 11.
Senedala.

Sheriffs of Counties, to Summon two Knights *de Legalioribus & Discretoribus singulorum Comitatum*; though it doth not appear by the Writ, whether the Sheriffs of the Counties were to Elect, and send these Knights, the Sheriffs being then of the Faction, and made by them; for 'tis there said, only *quod venire faciant*. There are also other Writs recited to have been directed to all the great Cities and Towns of *England*, as also to the *Cinque-Ports*; to send two of the most Legal and Discreet of each of the said Cities, Boroughs, Towns, and *Cinque-Ports*, to the said Parliament at *Westminster*, at the Time aforesaid. So that without the History of this Nick of Time, these Writs (which are said to be for the Delivery of the Prince out of Prison, and for the settling of Tranquility and Peace in the Nation,) cannot be understood.

But Prince *Edward's* Release could not be agreed upon in this Parliament, whatever other Business might be dispatched: So that Things still remained in this uncertain Condition (the King being all this Time a meer Shadow) until such Time as *Simon Montfort*, and *Gilbert de Clare*, Earl of *Gloucester* falling out, the latter at last took up Arms, and joining with the Earls of *Surry* and *Pembroke*, to whom also came Prince *Edward*, after he had made his Escape from *Hereford*; they all together raised considerable Forces against *Montfort*, who meeting them, and joining Battel near *Evesham*; *Montfort* with one of his Sons, and many other Lords and Knights were Slain, and all his Party routed.

Now pray tell me, if this is not a very clear Account from the History of the matter of Fact, why the Commons were first called to Parliament by *Montfort* during his Rebellion. And I think I can also give you very good Reasons (and Authorities to back them) why they were again discontinued all the rest of this King's Reign, until the 18th of *Edward* the First.

F. I shall tell you my Opinion of your Narrative by and by; but in the mean Time, pray satisfy me in one or two Questions: Pray Sir, what may be the Reason, that we can find but Twenty Three Earls and Barons Summoned, of that great Number there was then, and only Thirteen Bishops in this Parliament; and yet at the same Time there should be Summoned above an Hundred Abbots and Priors, and but Five Deans of Cathedral Churches; pray why might not these numerous Barons be trusted, as well as all the Abbots and Priors?

M. As for his not Summoning all the Earls, Barons, and Tenants *in Capite*, but putting Knights of Shires and Burgesses in their Rooms; there may be a very good Reason given for it, *viz.* the Danger that *Simon Montfort* and his Privado's apprehended from the too great Concourse of the Nobility, and their great Retinues; and the Example of his own and the Barons Practices at *Oxford*, in the Parliament of the 42d of *Henry* the Third, might be the Cause why they altered the Ancient Usage; and of their sending Writs out, commanding the Sheriffs of each County, as also the Cities and Burghs to send two Knights, Citizens, and Burgesses respectively. But the Reason why there was so many Abbots and Priors Summoned, was, because *Simon Montfort* thought himself sure of them: He was a great Zealot, and a Godly Man in those Times, and a great Minion of these Religious Men (as then called) as also of the Bishops and Clergy; and they were at least seemingly Great Favourites of his.

F. I must confess there is some colour of Reason, why *Simon Montfort* should Summon so many Abbots and Priors to this Parliament, if he were sure of all their Votes before-hand; but there is no Certainty of this; for if he had been so sure of them, there was as much Reason why he should have called them all likewise to the Parliament at *London*, which you say he Summoned the Year before; when with the Consents of the Bishops, Barons, and others, he made the new Ordinances you mention: But you cannot find in any Historian or Record, that he then Summoned so many of them; and it seems pretty strange, that all these Abbots and Priors, and Deans, not a fourth Part of which were Tenants *in Capite*, should all take the Trouble to come to this Parliament without any Scruple; if neither they nor their Predecessors had ever been Summoned before.

But the other Reason you give why so many Earls and Barons should be omitted, is much more unlikely; for if the numerous Barons factious Practices at *Oxford* had before frustrated *Montfort's* Design, there had been indeed some Reason why he should have done all he could to have hindered their coming again; whereas on the contrary, the Earls and Barons at the Parliament at *Oxford*, though they came thither with Arms and great Retinues, yet it was only to join him, and to force the King to agree to the *Oxford* Provisions. But if the Commons were now summon'd (as you suppose) to curb the extravagant Power of the Lords, yet it could not be his Interest, or indeed in his Power so to do; not the latter, because the Earls, Barons and Tenants *in Capite*, were too powerful and numerous a Body to have suffered such an Affront and Breach on their Ancient Right, as this would have been. Nor could he and his Two and Twenty Companions, have ever dared to have displeased so great and powerful a Body of Men, as you must allow your great Barons, and Tenants *in Capite* both great and small then were, and who made such a powerful Opposition for their Liberties in King *John's* Time; or that they would have thus tamely permitted Men wholly of the Sheriff's Choice, to have thus taken away their Places in Parliament, and made Laws for them, much less the Citizens and Burgesses, most of whom were certainly not Noble by Birth, nor yet held Lands *in Capite*. Nor could it be for *Montfort's* Interest so to do: For the greatest Part of the Earls and Barons were of his Side already, and thus to exclude them, had been the only way to disoblige them, and make them leave him, and go over to the King's Side. So that I must needs tell you upon the whole Matter, granting *Montfort* to have been such a Knave and Hypocrite as you make him, yet certainly he was no Fool, but a cunning Politician; and I leave it to your self, or any indifferent Person, to judge whether it was possible for him to do so silly and unpolitick a Thing as this. For granting all the Abbots and Priors to have been of his Side, (as you suppose) they could no way counterbalance the great Power of these Earls and Barons, and numerous Tenants *in Capite*, that were all hereby excluded. So that let the Commons have been Summoned when you will, it was certainly before this 49th of *Henry* the Third, or not at all.

But to give you my Opinion why so few Earls and Barons are mentioned in this Record of the 49th of *Henry* the Third, to have been Summon'd to this Parliament: I conceive it was not out of any Jealousy or Suspicion in *Simon Montfort* of those who were then his fast Friends, but out of pure Carelessness, or Omission of the Clerks; who I suppose through Haste, Inadvertency, or Multiplicity of Business omitted to enter the Names of all the rest of the Earls, Bishops and Barons, to whom Writs of Summons were likewise sent. And that I do not speak without Book, I appeal to the Record it self; where there is a blank Space left unfill'd of about Four Inches Breadth, which could be left for no other End, than to add the Names of all the rest of the Earls and Barons who were certainly Summoned to that Parliament, as well as those whose Names are there expressed.

M. I shall not longer dispute this Point, but I think you must grant that the Commons are never mentioned in any Record or Statute of this King; for after his Victory at *Evesham*, he called a Parliament at *Winchester*, whereto we do not find any Commons Summoned, as before; but the King, by the Advice of his *Magnates* alone, Seized the Liberties of the City of *London*, and also they gave him all the Lands of the late Rebels.

And then there was after this a Parliament Summoned at *Kenelworth*, in the 50th of this King, where it was agreed by the common Assent of the Bishops, Abbots, Priors, Earls, Barons, and all others, that Six Persons, who were all (except one) either Bishops or Barons, should chuse Six others, and the whole Twelve were to judge concerning those who were disinherited for their late Rebellion; and their Determination or Award, is call'd, *Dictum de Kenelworth*, and was made to better the Condition of the disinherited, and to turn the Forfeitures and Loss of their Estates into a Composition for them after the value of five years Purchase, to be paid at two or three short Payments: Yet we do not find that to this Parliament the Commons were at all summoned,

Summoned, but the contrary; for though it is true that the Statute gives us all their Names who had a Hand in drawing up this Decree, yet the Doctor further proves to you from Sir *William Dugdale's* Baronage, that there was not one of them, but what was either a Bishop, or a great Baron of the Kingdom. Whereas had there been any Commons in this Parliament, they would certainly have had Commissioners of their own Order, as well as the Bishops and Lords.

B. A. P. p. 144.

E I shall give you a short Answer to your Authorities from the Parliaments of *Winchester* and *Kenelworth*. As for the former, you must own that all the Rolls of it are lost; and that there is no more left of it on Record than that Writ or Commission which the Doctor has given us; which recites, That by the unanimous Consent of all the *Magnatum*, or great Men (as the Doctor renders it) the King had the Seisin and Possession of all the Rebels Estates given to him. Which is no Argument to prove that no Commons were there; since I have so often made out, that under this Word *Magnatum*, not only the Knights of Shires, but Citizens and Burgeßes were often comprehended. 'Tis true, there are no Writs extant, to prove the Commons were now Summoned; neither is there any Reason to believe the contrary; since if it were a cunning Invention of *Montfort* to Summon the Knights, Citizens and Burgeßes, to abate the Power of the Tenants *in Capite*, it was sure as good Policy for this King to continue so Politick an Institution, which would for the future serve for so good a Balance, not only against his Tenants *in Capite*, but his great Lords too. For the Parliament at *Kenelworth*, I shall admit all the Matter of Fact to be true as you have related it from *Mat. Westminster*, who says, that the Twelve Commissioners appointed to draw up the Statute of *Kenelworth*, were chosen *de Potentioribus Procerum, & Prudentioribus Prelatorum*; and also that the *French* Record (cited by the Doctor) together with Sir *William Dugdale's* Comment upon it, make it out plain enough, that the Lay Commissioners who were chosen by all the Parties there named, to make this Statute, were all great Earls and Barons, though in the Record it self only stil'd Knights.

Well, what follows from all this? That the Commons could have no hand in this Choice, because the *tous Autres*, or *omnes Alij*, mentioned in this, and other Records, must needs always signify the smaller sort of Tenants *in Capite*; and I say it signifies the Commons as now taken. Whether you have made good your Interpretation by any cogent Proofs, I must leave to your own Ingenuity; for to tell you the Truth, I think your Doctor has led you astray in this Point; and till you can make it out better than you have done, I must beg your Pardon if I keep my old Opinion. And if your Argument be good, that no Commoners were there, because none of them were chosen Commissioners, then by the same Argument none of the small Tenants *in Capite* were there neither; because none under the Degree of an Earl or Baron were Elected. As for the want of Writs of Summons to these Parliaments, if that were to be the Rule, that makes as much against the rest of the Tenants *in Capite*, who were no Barons; nay, the very Bishops, Abbots, and Lords; since there is no Writs of Summons found for their Appearance at either of these Parliaments; and so the King might call whom he pleased.

M. In the First Place, It does not follow that because *Montfort* had Summoned some of the Tenants *in Capite* to appear for all the rest; and that he also called some Citizens and Burgeßes to this Parliament of the 49th, yet the King might have very good Reasons (though we cannot now positively tell what they were,) not to follow this new Invention of *Montfort's*, however it might then serve the Turn; for perhaps the King did not like it, because introduced by a Rebel. And he had also by his Victory at *Evesham*, so quelled the Power of the great Lords, and Tenants *in Capite*, that I believe he was afterwards able to call or omit whom of them he pleased, according to the Testimony of Mr. *Cambden's* Nameless Manuscript Author, cited in his *Britannia*; that after the horrid Troubles and Confusions of the Barons Wars, only those Earls and Barons, *Quibus Rex dignatus est brevem Summonitionis dirigere venirent ad Parlamentum suum, & non Alii*.

And

And that this was true in Matter of Fact, I shall prove from the next Statute of *Henry the Third*, which is extant, viz. that of *Marlbridge*, made in the 52d Year of this King, to which there were no more Summoned than some of the more Discreet of the Greater and Lesser Barons, as appears by these Words in the Preface to that Statute, *Convocatis Discretioribus ejusdem Regni tam Majoribus quam Minoribus, Provisum est, & Statutum ac concordatum, &c.* which seems to have been done by the King's particular Direction; since by the general Writ of Summons provided by King *John's* Charter, the Sheriff of each County was to Summon all the Minor Barons, and Tenants in Capite; which could not be, if only the more Discreet were then Summoned; nor is there in this Preamble, the least Hint or Intimation of any Writs directed to Counties, Cities or Burghs, for the Choice of Members.

B. A. P. p. 144.
145.

I desire you in the next Place to take Notice, that *Briton* (who lived about that Time) supposes this Statute to have been made, *Per la Purveance de Robert Walerand & per Commune Assent des Graunts Seigneurs du Realme*; by the Procurement or Forecast of *Robert Walerand*, and by common Assent of the Great Lords of the Realm, without any Mention of the Commons. I have a great many more such Statutes to Instance in, which are said by *M. Paris* to have been made in several Parliaments of this King, by the Community, or Common University or Baronage of the whole Kingdom; but I pass them by, because we have sufficiently debated most of them already.

B. A. P. p. 95

F. If only some of your Great Lords, and Tenants in Capite, could thus meet, and make Laws to bind all the rest, and they so tamely put up this strange Infringement of their Privileges, as you suppose, it seems their Power was much abated since the 37th Year of this King, when (as I said) *Mat. Paris* tells us, that the Barons would do nothing without the rest of their Peers, whom it seems the King had then omitted to Summon; and therefore I must needs tell you, that I am not of your Doctor's Opinion, nor yet of *Cambden's* Nameless Author, that this King, after his Victory over *Montford* and his Adherents, could by his Prerogative call, or omit what Peers he pleased; since it is contrary to the Declaration of all the Bishops, Abbots, and Priors in full Parliament, in the Second of *Richard II.* wherein they claimed, "That holding *per Baronium*, it did belong to them, *de Jure & consuetudine Regni Anglie* (that is, by Rights of Prescription) to be present in all Parliaments as Peers of the Realm, and to treat, consult and ordain concerning the Affairs of the Kingdom. And if the Spiritual Lords claimed this Privilege, sure the Temporal Barons might with the like Right have made the like Claim; and I am sure it is highly derogatory to the Rights of the Peerage of *England* to maintain that the King either hath, or ever had the Power of calling and leaving out what Lords he pleased, and so to make pack'd Parliaments to serve a Turn whenever he pleases.

Ibid. Sir R. Cotton's Collection of Records in this Year.

But to come to the main Strength of your Argument, that because the more Discreet Men of the Kingdom of the Greater as well of the Lesser, are only mentioned in this Statute, that therefore there were only called to it such Lords, and Tenants in Capite, as the King pleased to Summon, and that all the rest were left out; which is a very idle Supposition; for at this rate, I may as well say, that there were no Temporal Barons there at all, and that by the Greater Discreet Men are to be understood some of the Bishops and Judges; who, though no Peers, yet were then the most Learned in the Laws and Customs of the Kingdom, of any Persons at that Time, and consequently the most Wise and Discreet to draw up Laws; and by the lesser Sort of Discreet Men, shall be understood such Great Clerks and Lawyers, though not Tenants in Capite, as the King pleased to chuse, as being likewise most able to advise him. But if you tell me that this Interpretation is forced; I may as well say the same of yours, and that with greater Reason. Yet I shall prove that this Parliament was Summoned in no other Manner, and consisted of no other Persons than those that used to appear in all other preceding Great Councils or Parliaments.

In the First Place, therefore, I must put you in Mind of what I have already said, that there is no Conclusion to be drawn from the bare penning of the different Forms of ancient Statutes, who were Summoned to the making

of them, nor by what Power they were Enacted; some of them, *it is true*, being drawn in the Form of the King's Charters, or Writs: without any Mention of the Assent either of the Lords or Commons; and others are said to be Enacted by the whole Realm, without any Mention of the King at all; and I have given you a List of divers old Statutes from the Reign of King *Henry* the Third, to the Time of King *Edward* the Third, in which there is no Mention at all made, either of the King, or any other of the Three Estates; and yet no Man, I think, but will grant that these Statutes were all made, and agreed to by them, according to the usual Forms, though it be not particularly expressed. And therefore to give a better Account of this Law, it is fit we consider, that these Words *convocatis Discretioribus Regni*, are no more restrictive to some particular Persons, than if it had been in the Superlative Degree, instead of *Discretioribus*, it had been *Discretissimis*, or *Sapientissimis Regni*, which no Man would interpret to mean only a few of those whom the King should judge the wisest and most discreet Men of the whole Kingdom; and therefore we must not mind the Grammatical, but Legal Sense of these Words; and then it amounts to more than this, that by the *Greater Discreet Men*, were meant the Lords Spiritual and Temporal, as under the *Lesser Discreet Men* were included the Commons.

But that these *Minores Discreti*, cannot be understood of the Tenants *in Capite* only, appears by the Conclusion of the Preface to this Statute of *Marlbridge*, in these Words: *Provisiones, Ordinationes, & Statuta subscripta ab omnibus Regni ipsius incolis, tam Majoribus, quam Minoribus, firmiter & inviolabiliter temporibus perpetuis Statuerit observari*; so that if by the *Majores Incole*, who were to observe these Statutes, the Lords Spiritual and Temporal are meant, then by the *Minores Incole Regni*, must be understood for the same Reason, the whole Commons of *England*; and so likewise by Parity of Reason, by the *Minores Discreti*, mentioned before in the Preface, must be also meant the Representatives of the Commons in Parliament.

And that this alone can be the genuine Sense of these Words, may appear, by comparing this Statute with another made at *Gloucester*, the 6th of *Edward* the First; where in the Preface it is recited in these Words, *parvenant mesm le Roy, pur Amendement de son Royaume, & pur plus plener exhibicion de droit sicome le profit d' office demande, appellees les plus Discretes de son Royaume auxibien des Greindres, come des meindres, establie est, & acordamment ordeine*. So that if the Commons were there called to this Parliament, and if by the *Greindres Discretes*, were understood the Lords, then by the like Reason under *Meindres Discretes* must be meant the Commons, as at this Day.

But that this Statute was made by the Common-Council of the Kingdom, and not by a Conventicle of a few of the Lords and Tenants *in Capite*, Summoned *ad Libitum Regis*, appears by all the Original Writs, founded upon several Branches of this Statute, which are to be seen in the Register; reciting that this Statute was made *de Communi Concilio Regni*. Now the Word *Commune* signifies no more than General; and how could this be call'd a General Council, which only consisted of a few of the wiser Sort of Bishops, Lords, and Tenants *in Capite*.

As for what you and the Doctor cite out of *Cambden's* Nameless Author, of King *Henry's* sending Writs of Summons, and culling out a few of the Earls and Barons out of a great Multitude that were Seditious, after the War with the Barons was ended; if you will have it extend to those who never forfeited by reason of *Montfort's* Rebellion, I need not say much to it, since Mr. *Selden*, in his Titles of Honour, hath sufficiently baffled that Author's Authority; for if it was never true as to Earls, it was not like to be truer in respect of the greater Barons. But as for your lesser Barons, or Tenants *in Capite*, I know not but he might be much more in the right, in respect of them.

What you say as to *Robert Walrand*, is not much material; for though he was never so great a Baron or Lawyer, yet he could draw up this Law but as being one of the Kings Council, who in those Days drew up, and prepared all Bills that were offered in Parliament. And thus *Erten* might well say, that

Fol. 171, 174,
175.

Fol. 550.

that this was made by the *Common Assent* of the Great Lords, (this Act being so highly for their Advantage) and yet the Commons might be also there as well as they; for otherwise, if *Briton* must be literally understood, what becomes of your *Minores Discreti* mentioned in this Statute to have given their Consents, as well as the *Majores*? whereas this Author mentions none, at whose Request it was made, but the Great Lords only. But that by these *Minores Incolæ Regni*, mentioned at the end of this Statute, were meant the Knights, Citizens, and Burgeses, pray see a Writ of Summons the 24th of *Edward* the First, with the Doctor's Note upon it, in his Answer to Mr. P. The Writ is directed to the Archbishop of *Canterbury*; and concludes thus, that he should warn the *Procuratores Cleri* there mentioned, to appear with him, *ad tractandum, ordinandum & faciendum nobiscum, & cum ceteris Prelatis, & Proceribus, & Alijs, Incolis Regni nostri*; in the Margin over-against these last Words, the Doctor gives us this Note, the *Incolæ Regni* were the Knights, Citizens and Burgeses mentioned in the former Writ, but not here particularly enumerated. Now, though it is true, that this Writ is after the Time that the Doctor will acknowledge the Commons to have been constantly Summoned to Parliament; yet if these Words could mean the Commons in this Writ, why they should not signify the same in this Statute, I can see no Reason, but the Doctor's Prejudices to the contrary. But if you have no more Authority to alledge from the Reign of *Henry* the Third, pray go on, and shew me the rest of your Arguments, why you suppose the Commons were never called in above half the Reign of *Edward* the First, till the 18th. And I desire this the more, because as I have already proved from the Statute of *West.* 1. 3d of *Edward* the First, the Words, *& tout le Communalty de la Terre*, coming immediately after the Counts, Barons, and those other Words foregoing, must needs signify the whole *Communalty*, or Commons of the Land; and so the Doctor himself has rendered it in his Answer to Mr. P.

Rot. Cl. M. 4.
D. 15.
B. A. P. p. 155

B. A. P. p. 146.

M. But first, pray observe what the Doctor there tells you, that by the Word *Communalty*, he means not the Commons in the Sense they are now taken, but the Community of the Tenants *in Capite* only: And for this, pray consult the Writ of Summons to the Archbishop of *Canterbury* to come to this Parliament, (which I confess is the only Writ of this kind that is left upon the Rolls from the 49th of *Henry* the Third, to the 22d of this King) in which you will find the Archbishop Summoned *ad tractandum, ordinandum una cum Prelatis, & magnatibus Regni*; that is, as the Doctor explains it, with the Prelates and Great Men of the Kingdom; which Great Men very frequently comprehended, as well the Barons *Majores* as *Minores*, the Earls, Barons, and greater Tenants *in Capite*, and the less, which then were the Community of the Kingdom; so that your Interpretation of the Words *des Greindres, & des Membres* in the Statute of *Gloucester* (by which you would interpret the like Words in the Statute of *Marlbridge*) for the Commons, as now understood, will signify nothing, as being before the Time we allow the Commons to have been Summoned to Parliament in this King's Reign.

Clau. 3. Ed. 1.
in 1. die veni-
endo ad Parlia-
mentum.

Ibid. p. 147.

F. It were a very easy thing for any Man of a confident undertaking Temper, to frame what Interpretation he pleases, from the general or equivocal Words of Histories or Records, if he could as easily find Authorities to support it; but I see nothing like a Proof for it, but the Doctor's bare Assertion: Since I have already sufficiently proved, that the Words *Communalty* and *Communitas* coming in our Statutes and Records immediately after the Counts and Barons, do always signify the Commons, as now understood; and why they should not signify so here, I can see no Reason. For as to the Words in the Writ to the Archbishop of *Canterbury*, they prove nothing at all, who were the Constituent Parts of that Parliament; for if the Word *Magnates* must needs signify the greater and lesser Tenants *in Capite* only, pray why do they not signify so in the Writ of Summons to Parliament, of the 49th of *Henry* the Third, to the Bishop of *Durham* (which the Doctor has Printed) where there is no mention made of his Treating or Advising with any other Persons, than the other Prelates, & *Magnatibus nostris*? Yet the Doctor, within two Leaves after, gives us the Writs of Summons for the Knights, Citizens, and Burgeses to this Parliament. But it seems in his first Edition of his Book against Mr. P.

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M. 11. D. 15.

B. A. P. p. 147.

he had not made those rare Discoveries he did afterwards; where he pretends not to carry this Opinion beyond the 49th of *Henry* the Third. Therefore pray go on to shew this new Light, by which the Doctor discovered that the Commons were never Summoned to Parliament all the Reign of *Edward* the First, till the 18th.

E. A P. Pag.
147, 148.

M. In the first place, you cannot shew us any mention of the Words Communalty, or *Communitas*, in any of the Parliaments of this King's Reign; not in the Statute *de Bigamis* made in the 4th of this King; the Preamble thereof runs to this effect; That these Underwritten Constitutions were recited before some of the Bishops and others of the King's Council, and afterwards heard and published before the King and his Council; here is no express mention, who were the Constituent Members of Parliament at this Time, or of this Parliament in particular, more than that it is said, in the Close of this Statute, that the aforesaid Constitutions were Published at *Westminster*, in the Parliament after the Feast of *St. Michael*.

So likewise by the Statute of *Westminster* the 2d, made in the 13th of *Edward* the First, it appears, that the Prelates, Earls, Barons, and the King's Council, were the Constituent Parts of the Parliament at *Gloucester* you but now mentioned; for it recites, that the King, in the 6th Year of his Reign, *Convocatis Prelatis, Comitibus, Baronibus, & Concilio suo apud Glocestre, &c.* And thus the Statute of *Mortmain* made by this King in the 7th of his Reign, is recited to have been made *de Consilio Prelatorum, Comitum, Baronum, & aliorum fidelium Regni nostri de Concilio nostro existentium, &c.* The Statute of *Aton Burnel*, was made in the 11th of this King, by himself and his whole Council, *Le Roy per Luy, & per tout son Council ad ordein & establie*; though this was done in Parliament, as appears by the Statute of Merchants of the 13th of the same King, which recites, that the King had made by himself and his Council at his Parliament at *Aton Burnel* these Establishments. I have been the more particular in the recital of these Statutes, not only because here is no mention made of any Commons in these Parliaments; but also because it farther confutes your Position in your 5th Dialogue, that the King had not then the sole Legislative Power.

F. You have said almost nothing now (I except that of the King's being the sole Legislative Power,) which I have not already freely acknowledged, *viz.* that the Words *Communitas*, and Communalty, are not above twice mentioned in the enacting part of any Statute in this King's Reign; and the Knights, Citizens, and Burgeesses not once mentioned, till the 34th of this King; nor any mention again of the Commonalty, till the Statute of *Lincoln*, made in the 12th of *Edward* the Second; and yet it appears by the Writs of Summons and Expences, beginning at the 28th of *Edward* the First, that the Commons had been Summoned to Parliaments ever since that Time; and that they were so also before that Time, I have already proved both by Acts of Parliament and Records; and it would be a very uncertain Constitution, if we should suppose the Representatives of the Nation, in the Great Council or Parliament, to alter as often as the Words or Phrases whereby they are expressed. But by yours, and your Doctor's Method of Arguing, if the Writs of Summons to the Commons of the 49th of *Henry* the Third, had happened to have been torn off, and lost, as they easily might have been; since it is only affix'd to the Roll by a loose Schedule; and also, that all the Writs of Summons to the Commons had been lost, from the 23d of *Edward* the First, to the 34th, when there is no denying the Commons to have been there, because particularly named; and if these Writs had also happened afterwards to have been lost, till the 12th of *Edward* the Second, when they are expressly named in the Statute of *Lincoln*, which I now mentioned: Then the Commons should have been as well excluded by the same Argument, as they are after the 49th of *Henry* the Third, by the Doctor and those of his Opinion, because no Writs of Summons are found for them, nor any mention made of them in any Statute, first for above Thirty Years, and after that for above Thirteen Years together; since you will not allow the Words *Communitas* and *Communalty* to signify the Commons, till you please to take them in that Sense.

This

This may serve as a general Answer to all you have said concerning the Omifion of the Commons in all Statutes, till the 18th of this King, and may serve not only for them, but against the Bishops and Tenants *in Capite*; being all present at divers Parliaments, where the Acts are recited to have been made by the *common Assent or Accord*, without at all specifying whose Assent, and sometimes without naming the King at all.

This being premised, it will be easy to return you a short and particular Answer to the Statutes you have cited. As for that *de Bigamis*, you confess that the Statute only mentions its being recited before the King's Council, and publish'd in Parliament, without relating what were the constituent Parts of it; *Ergo*, no Commons were there; and I may, with as good a Face say, no Bishops, Abbots, nor your smaller Tenants *in Capite* were there, because not particularly named. As for the rest of the Statutes you have cited, of *Gloucester*, *Mortmain*, and *Aſton Burnel*; 'tis true, the Prelates, Earls, and Barons are there only particularly mentioned, because they then bore the greatest Figure in the Government, your Lesser Tenants *in Capite* being quite left out; for that they could not then be comprehended under *Baronum*, I have sufficiently made out. But to conclude, give me any sufficient Reason, why the Commons might not be at these Parliaments, as well as they were in the 18th of this King; tho' most commonly no otherwise mentioned than they were before that Time. If you say the Writs of Summons make it out they were there, you confess your Prejudice; since the two Writs of Summons before that Time would, if they had not been lost, have made out the same Thing.

As for what you say for the King's being the sole Legislative Power in those Times, I have long since proved, that no King could ever legally make Laws, without the Consent of the Common Council, or Parliament; and after that, all that you can say for the King's making Laws alone, with the Advice of his Council, signifies nothing: For if the Words are literally to be understood, then this Council of the King, whether you will have it to consist of the whole Parliament, as the Statute of *Mortmain* seems to intimate, or else of his particular Council in Parliament, as in the Statute of *Aſton Burnel*, where those Constitutions are said to be ordained by the King and his Council; if by ordain'd, you mean only drawn up, and prepared for the Parliaments Assent, it is no more than what I shall easily grant to have been the usage in those Times: But if you will have ordained to signify *enacted*, then pray tell me how you will avoid the King's Council having a joint Hand with the King in his Legislative Power; since the Words are, the King *by himself and his Council had Ordered and Established*. But you have carried both your self as well as me, too far from the main Question; therefore, pray give me some better Reasons why you are of this Opinion, That the Commons were not Summoned again to Parliament, till the 18th of *Edward the First*.

M. I am now coming to it: But first remember, that about an Hour or two ago, I cited a Record of the 30th of *Edward the First*, which related to an Act of the 18th of this King: By which Record it appears, that the Prelates, Earls, Barons, and other great Men of the Kingdom, had then in full Parliament on the first of *June*, granted him 40 s. on every Knights Fee, to marry his Daughter: And it thence also appears, that tho' this Tax is said to be given for themselves and the whole Community of the Kingdom; yet it was by the Community of Tenants *in Capite* alone, because it was to be raised wholly upon Knights Fees; so that hitherto in this King's Reign, there appears nothing that can plainly evince, either the Summoning, or being of any Commons in Parliament, as now understood; however, we are at least left at great uncertainties; nay, in my Opinion, the Proof is more strong on the Negative, than there were none.

F. I wonder you should mention this Writ any more; since I have already confuted the Doctor's Notion about it; and proved, that it was a general Tax granted by the Parliament upon the whole Kingdom, and not laid, either by or upon the Community of the Tenants *in Capite* alone; nor does the way of Taxing by 40 s. upon every Knights Fee at all prove it: For if it is to be understood of Lands only held by Knights Service, then this Tax could not have extended to any other Estates, as certainly it did; since the King could, by King
John's

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John's Charter have made his Tenants *in Capite* to grant him an Aid towards this Marriage of his Daughter; and (if what you say be true) could also have made all the Mesne Tenants of the Tenants *in Capite*, to have contributed to it according to the Knights' Fees they held; and this without calling a Parliament at all; therefore pray give some better Authority than this; for I'll assure you, I am not at all satisfied with it.

B. A. P. p. 149.
& dein.

M. I will now give you the Writ the Doctor has discovered, and by which it will plainly appear, that this Tax granted in the 18th of this King's Reign was given before ever the Commons were Summoned to it; and for this, the Learned Doctor has found out, (among a loose Bundle of Writs of this Year,) a Writ of Summons, directed to the Sheriffs of most Counties of *England*; and they are the ancientest extant, or perhaps that ever were (for in probability, the calling of Knights, Citizens, and Burgessees, according to that Example, was discontinued from the 49th of *Henry the Third*, unto this Time) by which two or three Knights were directed to be chosen for each County: Pray read the Writ it self; since I look upon it as the first Pattern of this kind; that of the 49th of *Henry the Third*, seeming to have been written in Haste, without those Forms that were afterwards required in Writs of this kind, and particularly in this: *Edwardus Dei Gratia Rex Anglie, Dominus Hibernie, & Dux Aquitanie Vice-comiti Westmerlandie Salutem. Cum per Comites, Barones & quosdam alios de Proceribus Regni Nostri, nuper fuisset super quibusdam Specialiter requisiti, super quibus, tam cum ipsis, quam cum aliis de Comitatibus Regni illius Colloquium habere volumus & Tractatum, tibi precipimus quod duos, vel tres de Discretioribus, & ad laborandam potentioribus Militibus de Comitatu predicto sine delatione Eligi, & eos ad nos usque Westmonasterium venire facias ita quod sint ibidem a die Sancti Johannis Bapt. prox. futur. in tres Septimanes ad ultimum cum plena potestate pro se, & Communitate Comitatus predicti ad consulendum, & consentiendum pro se & Communitate illa hiis que Comites, Barones, & Proceres predicti, tunc dixerint concordanda, & habere ibi hoc Breve. Teste meipso apud Westmonast. 14. Die Jun. Anno Regni Nostri 18.*

Whereby you may see in the first place, that there was yet no certain Number of Knights of Shires settled, who were to be Summoned to appear at this Parliament. And you may, in the next place remember from a before-mentioned Record of the 30th of *Edward the First*, That on the first of this Month, the King had Scutage then given him in full Parliament: And now Fourteen Days after, at the Instance of the Earls, Barons, and other Great Men of the Kingdom, upon certain matters by them moved and propounded to him, he issued His Writs of Summons to the Sheriffs of the several Counties, to cause to be chosen two or three Knights of each County, to come to him at *Westminster*, three Weeks after *St John Baptist* at farthest. We may also further observe from this Writ, that it is most probable (though it is not here absolutely said so) that the King was moved by the Earls, Barons, and great Men of the Kingdom, to call these Knights to this Parliament; and that as this Writ is the first to be found after that of the 49th of *Henry the Third*; so I take it to be the first Writ of Summons after that Time, for the Election of Knights to represent the several Counties.

In the next place, that there could be no Citizens nor Burgessees chosen, or sent to this Parliament by virtue of this Writ, in the same manner as they were afterwards by Directions contained in the Writs sent to the Sheriffs, for Electing Knights of the Shires.

Lastly, That by this Writ, the Knights were to come to the King at *Westminster*, three Weeks after *St. John Baptist* at farthest; which was the 15th of *July*; also, that in the same Year, between the Time of the date of the Writ, and the Time appointed for Meeting of the Knights, the Statute of *Westminster the Third* was made, as may appear by this Clause at the beginning *Dominus Rex in Parlamento suo apud Westmonasterium post Pascha. Anno Regni sui Decimo octavo, videlicet in Quindena Sancti Johannis Baptiste. (that is, the 8th of July) ad Instantiam Magnatum Regni sui Concessit, Providit, & Statuit, Quod de cetero liceat unicuique libero homini, &c.* So that this was the same full Parliament, which gave the King Scutage on the first of *June*;
and

and then the King and Barons, without the Commons, made this Statute, or the Knights had another Summons after the Date of this Writ (for before that they were not in Parliament) or the Knights came a Week before they had need to have done; but neither of the latter are probable, seeing the Knights then were great Husbands of their Time and Expences, and were not very forward to undertake this Service, as being constantly bound with, or engaged by Sureries, or Manucaptors for the Performance of it, and their Appearance in Parliament: And therefore it seems reasonable to conclude, that this Law was made without them, and before their coming to Parliament.

So much of this Writ; from which, as well as divers following Writs and other Records, it is evident, that it was from this King's Authority, and at this very Time, that the House of Commons came to be fixed and establish'd in the present constant Form it is now, and hath been in for many Kings Reigns; and then the King in this Age was not altogether confin'd to any Number of Knights, Citizens, or Burgeses; nor were several strict Forms and Usages now practis'd, ever then thought of, nor some Legal Niceties and Punctilios now in use, then judg'd absolutely necessary.

E. Pray give me leave to answer what you have now said from this Writ, before you proceed to any other Record. First, as to your Argument from the Variety or Uncertainty of the Number of Knights of Shires, which you at first suppose to have been summoned to Parliament, that I doubt will prove a gross Mistake; for if we closely consider the Writ it self, it will prove no more than a Summons of these Knights to a great Council, Colloquy or Treaty (as the Writ here calls it) and not to a Parliament; the Words *Colloquium & Tractatum* mentioned in the Writ, not then signifying a Parliament; but such a Colloquy, Treaty or Council, as is mentioned in the Statute of the Seventh of this King, forbidding all Men coming with Arms to such Assemblies; wherein there is also a plain Difference made between Parliaments and such Treaties, as I have already proved from the Statute of the Staple of the 27th of Edward the Third, which was first made in such a Treaty or Council, as appears by the Title to the said Statutes, and was afterwards confirmed by the next Parliament, in the 28th Year of the same King, *Chap. 1.* whereby *Magna Charta*, and all other Statutes before made, are also confirmed. For had this Summons (you mention) been to a Parliament, sure there would have been also Writs of Summons found for the electing and returning of Citizens and Burgeses, as well as Knights of Shires to this Assembly, and these Writs of Summons would have been entred on the Dorse of the Close Rolls, according to the Rules your self have laid down; whereas this Writ is only found in a loose Bundle of Writs of Summons; neither is there any Title in the Margin of the Record (as is usual in Writs of Summons to Parliament,) whereby it may appear what kind of Assembly this was to which these Knights were summoned. Nor is your Argument from the Date of the Writs of Summons any convincing Proof that the Commons were not already in this Parliament at the Time of the Writ issued; since during the Session of it, the Earls and Barons might make this Request, for calling of some other Knights out of the Counties, to give their Opinions and Advice in the Matters to be proposed to them by the King; and that thereupon the King at their Request, thought fit to summon Two or Three more of the Knights to have their Advice also.

And as for your last Argument, that the same Parliament which gave the Tax above-mentioned on the first of June, must be sitting even to the very Time of the Return of the Writ, because the Statute of *Westminster* the Third was made on the *Quindene* of *St. John Baptist*, (*viz.* the 8th of July) so that the King and the Barons, without the Commons, made this Statute, and that these Knights were summoned after the Act was passed; there is no Necessity of making these Consequences; for this Parliament might very well be dissolved that very Day this Act passed, and this Council or Colloquy might be summoned to meet within Three Weeks after *Midsummer* (*i.e.* about the 16th of July) according to the Writ you have cited. And so I believe it would appear, were the Rolls of that Parliament, and the Writs for the
the

the Expences of the Knights now extant, as they are lost, as well as those of divers succeeding Parliaments.

Al Well then, you are forced to confess, that this Writ was issued whilst the Parliament was still sitting; and if so, I cannot see any need there was of another less Council or Colloquy to meet after the Parliament was ended, since as long as it was sitting, that could have much better dispatched all such Business as the King had to do; and how the King could foresee that he should have need of another Council before he had any Business for it, seems very improbable; and therefore I think I may very well suppose with the Doctor, that this Writ was a Summons to Parliament, though it does not (I grant) expressly call it so. But your Argument is of no weight, that because this Writ was not entred upon the Close Roll, that therefore it is not to be look'd upon as a Summons to Parliament, as also because the Title to it is only *Summonitio ad Consilium*; since the Doctor in his Answer to Mr. P. gives us several Parliament Writs upon the Close Rolls with this Title *ad Consilium*; which proves, that the King had in those Days a larger Power of calling what number of Knights of Shires he pleased to Parliaments; as appears by Two other Writs he there gives us of the 22d of Edward the First, which are entred in the Close Rolls to the Sheriff of Northumberland, to cause Two Knights to be elected for that County, bearing Date the 8th of October; and the next Day after, the King, as appears by another Writ to the same Sheriff, ordered him to cause to be chosen two other Knights besides the former, and to cause them also to appear at Westminster the Morrow after St. Martin's Day, to hear and do such things as the King should more fully enjoin: The like Writs (with both the former) were sent to all the Sheriffs in England. Now though it is true, that the Title to the first of these Writs, is only *de Militibus Elegendis & Mittendis ad Concilium*; yet these Words well considered must certainly here mean a Parliament, both these Writs being entred upon the Close Rolls, where all Writs of this kind are wont to be found, as I have already observed; and besides, the Words in the first Writ are the same with those which are found in several other Writs of Summons to Parliament, viz. *ad Consulendum, & Consentiendum pro se & Communitate illâ hiis qua Comites, Barones & Proceres predicti concorditer ordinaverint in præmissis*.

E. I confess we are at a loss in this Affair, for want of the Records of this Parliament; which if we had, I doubt not but there would appear very good Reasons why the Lords did then desire the King should consult more of the Knights of the Shires than what had appeared at this Parliament; as that Lords might refuse to give their Advice in the Matters proposed by the King, without he would also consult more of the best and ablest Knights of Counties, who were to come up with fresh Power, and further Instructions, what Answer to give the King in the Matters he should propose, which, that it was neither to give Money, nor make Laws, is plain; since (you say) the Tax of 40 s. on every Knight's Fee was given, and the Statute of Westminster 3d made before they came up to Parliament; but indeed the Words in the Writ plainly prove that this was no Parliamentary Meeting, since they are here only Summoned *ad Consulendum, & Consentiendum*; whereas in all Writs of Summons to future Parliaments, the Words are *ad faciendum quod tunc de Communi Consilio ordinabitur*, or the like, as appears by the Writ of Summons of the 22d of this King, which the Doctor has printed; whereas the Words in this Writ are only *ad consentiendum, &c. hiis qua Comites, Barones & Proceres predicti tunc duxerint concordanda, &c.* And if this had been done at the Request of all the Tenants in Capite (as you suppose,) how come the Bishops, Abbots and Priors, who held also in Capite, to be omitted, and not mentioned in this Writ to have joyned in this Request, as well as the Earls, Barons and great Men?

But as for the Doctor's next Precedent, viz. a Writ to the Sheriff of Northumberland, to return Two Knights of the Shire, and then the next Day after, other Two for the same County; I am not at all satisfied, that those Writs were a Summons to a Parliament, and not to a great Council; for besides the Title of the Writ is *de Militibus Elegendis & Mittendis ad Consilium*, the

Words

Words in the Writ are not the same with those which were commonly used in Writs of Summons to Parliament, as I have already shewn you in this Writ of Summons we are now upon: Whereas in the Summons to Parliament of the 23d of this King, the ordaining Part doth as much refer to the Commons, as to the Lords, the *Commune Consilium* consisting of both; whereas in these Writs you have cited, they were to consent to such Things which the Earls, Barons, and great Men should think fit to agree to. But that I may shew you a little more plainly, the Absurdity of this Fancy of your Doctors, that these Knights of Shires were now summoned, the Parliament sitting; Pray let me ask you one or two Questions concerning this Business; pray who were these Gentlemen that the King you say thus summoned to Parliament?

*Gloss. Tit. 1.
M. A. D. 117.*

M. According to the Doctor's Account, they must have been all Tenants *in Capite*, since he often tells us, that out of these alone, the Knights of Shires were chosen at the first.

F. Well, but then who were these *Magnates* and *Alij Proceres*, mentioned in the Statute of *Westminster*, and in this Writ of the 18th of *Edward the First*?

M. I must own my self at a loss, certainly to define who they were; for if I say they were the smaller Tenants *in Capite*, who are here put as a distinct Order from the *Comites & Barones* immediately foregoing, I foresee you will ask me how these Gentlemen could be Summoned; since all the Tenants *in Capite* were at this Parliament already? Therefore, I must tell you, I think there were only some of the greatest and wisest of the Tenants *in Capite*, who were no Barons, now Summoned; and whom the Doctor tells us, were often called to great Councils, as Barons, Peers; and who, though sometimes called to sit among the Lords, were often again omitted in several Kings Reigns; so that this Parliament was composed (as those of *Melbridge* and *Gloucester*) not of all, but only of the more discreet of the lesser Barons or Tenants *in Capite*.

F. If this be all you have to say to extricate your self out of this Difficulty, I think it will not amount to much; for in the first place, all you have here said is meer Conjecture without any Proof; since this Statute of *Westminster* 3d, says only in general, that it was made at the Instance of the *Magnates*, under which Title your Doctor, when he explains the Writ of Summons to the Archbishop of *Canterbury* tells us, were frequently comprehended the *Barones Majores*, the Earls and Barons; as under *Minores*, the lesser Tenants *in Capite*; which when the Statute of *Westminster* the first was made, he will have to be the whole Commonalty of the Land therein mentioned; and why this Parliament of *Westminster* the 2d, should not consist of the same Members now, needs some better Reasons than your bare Affirmation to the contrary. Besides, this Prerogative of calling these Barons Peers to Parliament, did not only extend to Tenants *in Capite*, but to other Mesne Tenants also; if the King thought them considerable enough for Estates, or Wisdom, to do them that Honour; and so was not confined to Summon none but Tenants *in Capite*, who according to your Interpretation of King *John's* Charter had all a Right to appear by General Writs, at the Common Council of the Kingdom. But you may put what Sense you please on these Words *Magnates & Proceres*; yet I am sure your Doctor can take them in no other Sense than for the Community of all the Tenants *in Capite*, both great and small; and so he tells us in his *Glossary*, when he Comments upon the Writ of the 20th of *Edward* the First, which you mentioned, and which refers to this very Parliament of the 18th, when Forty Shillings was granted on every Knights Fee to Marry the King's Daughter; and there the Doctor immediately tells us, "That such as paid that Scutage" were *Tota Communitas Regni*, and no others; and that the Tenants *in Capite* granted and paid it first for themselves and Tenants, &c. and which must certainly relate to this very Parliament of the 18th of *Edward* the First, or none at all.

B. A. P. p. 147.

*Tit. Communitas Regni.
B. G. p. 32. 33.*

M. I confess I do not see how the Doctor can solve this Difficulty, but by denying what he has already said, and affirming, as I do now, that all the lesser Tenants *in Capite* were not Summoned to this Parliament, but only

some of them at last ordered by this Writ to be chosen and returned by the Counties.

F. Yes, he might do it, if bare affirming were to pass for Proof; but I shall not give up my Reason upon no better Grounds, either to him or you; not to mention the Improbability of the Thing, that the King should be now overpersuaded by the Earls, Barons, and other Great Men, to call these Knights of Shires, which had been omitted ever since the 49th of *Henry* the Third, for above Twenty Years, when he had no need at all of them, but rather the Advantage of governing without them; since it is the Policy of Princes rather to diminish than increase the number of the Members of their great as well as private Councils, who certainly are more easily managed when they are a few than a great many.

M. But what if we should go from the Doctor's Position, and say, that perhaps these Knights were chosen out of the *Mesne* Tenants of the Tenants *in Capite*; many of whom I grant might be considerable for Interest as well as Prudence; and with whom the King at their Request might desire to treat of certain Matters which had been before moved and propounded by him.

F. This is all that can be said, and yet is much more unlikely than the other; since to believe that the Earls, Barons, and Tenants *in Capite* should be now grown so weary of their Power of imposing Taxes, and making Laws for the whole Nation, as to intreat the King to admit their Under-Tenants to partake of so large a share in both, is so extravagant a Fancy, that if it had not suited with the Doctor's present Hypothesis, he would never have asserted it in cold Blood; since himself affirms, that upon the making of King *John's* Charter, the Earls, Barons, and Tenants *in Capite*, were the only Parties to it; and that all the rest of their Tenants who were there present, were only their Retinue and Tenants in Military Service, which were with them at Runnemede, and were hardly to be reckoned among the Freemen of the Kingdom; all the rest being only Followers who helped to augment the Noise, and were not Law-makers: For 'tis not probable (says the Doctor very well) that those Men that had the Force of the Nation would permit Men of small Reputation to share with them in Law-making: Those that had the Power of this or any other Nation de Facto, always did give Laws, and Tax the People. But it seems these Great Lords and Tenants *in Capite*, are either very stiff to maintain, or else easy to give up their Privileges, just as it best suits with the Doctor's present Occasion; but the Doctor may contradict himself as much as he pleases, since it is not his Fault, but his Hypothesis that hath led him into it.

M. I confess it seems somewhat hard at present to conceive it; but we know not what Reason the Lords and Tenants *in Capite* might have had to desire the Concurrence of these Knights of Shires at this Juncture of Time. But that their coming to Parliament looks like a new Thing, may farther appear from hence, that the King for a good while after the introducing Knights of Shires to serve in Parliament, was wont to use the Liberty of Nominating the same Members of Parliament who were formerly chosen; as appears by a very remarkable Writ the Doctor there likewise gives us, of the 28th of the same King, directed to the Sheriff of *Cumberland*; whereby he is commanded to cause to appear at the Parliament of *Lincoln*, on the Octave of *St. Hillary*, the very same Knights, Citizens and Burgeßes, who had before appeared at the last Parliament, unless any of them were Sick or Dead. From which we may collect, that our Kings in those Days often made use of their Prerogative of Summoning such Members to Parliament, as were not then actually chosen by the Counties to serve in that Parliament: And for a farther Confirmation of this, there is still extant upon Record in the same Roll the Returns of several of the Sheriffs upon the same Writs: Whereby it appears, that the same Members were returned to appear in this Parliament, without any new Elections, who had before served at the precedent, unless in the Case of some that were Sick or Dead.

And that our Kings had not yet a long Time after lost their Prerogative of Nominating how many Knights, Citizens and Burgeßes, they would have chosen and returned to appear in Parliament, may appear by a Writ of the 45th of *Edward* the Third, whereby one Knight for a County, and one Citizen and Burgeß, and

and those too named by the King to the Sheriff, were to be Summoned to appear in Parliament at *Winchester*, to do those Things that are appointed in the same Writ, which were likewise directed to all the Sheriffs in *England*; and that this was a Parliament, appears from hence, that the Knights, Citizens and Burgeses had Writs for their Expences at this Meeting at *Winchester*. And though in these Writs it is only expressed by these Words, *Magnum Consilium Nostrium*; yet from this Writ of Summons it is evident, it did the Business of a Parliament, and so no great Matter for the Name.

Gl. 45. Ed. 2.
M. 22. D. 1.
T. R. 17. Ric.
Juni.

F. If these be all the Arguments you have to produce against the Ancient Right of the Commons being part of the Parliament before the 18th of *Edward* the First, I doubt they will not be sufficient to do the Business. For as to this Record of the 28th of *Edward* the First, whereby the King is supposed to have had a Power to cause those Knights of Shires to be returned who were Elected to serve in the Parliament before going, without any new Election, this is altogether precarious; for if you will but read the Writ it self, and the Reason of the King's thus acting, it will plainly prove the contrary. For the King recites in that Writ, "That having resolved that the Charter of Forests should be observed, and that his Subjects had made a Perambulation thereupon; yet that he would conclude nothing in that Matter, without the Counsel of the Prelates, Earls, Barons, and other Great Men; and therefore desiring to hasten that Business, as far as he could without any Delay, he thereby orders him to cause to come before him to the Parliament at *Lincoln*, the same Knights, Citizens, and Burgeses, as were before Elected. Now the King might have very good Reason for it, why he would rather treat with them than with any other, because they had been privy to all the precedent Transactions concerning this Business of Forests, and therefore were most likely to come to the speediest Conclusion with the King in that Affair, as being better instructed in it, than it was possible for any new Members to be, who had not before been privy to the whole Affair.

Yet that the King never intended hereby to impose Representatives upon his People without their free Consent, appears by this Clause at the end of the said Writ, *Ita quod Milites, Cives & Burgenses predicti dictis die & loco modis omnibus intersint cum plena potestate audiendi, & faciendi ea que ibidem in premissis ordinari contingent pro communi commodo dicti Regni*. Now how these Knights, Citizens and Burgeses could appear in Parliament with full Power of acting therein, without the new Election or Confirmation at least of those whom they represented, I should be very glad if the Doctor or your self could inform me. But to come to your next Record of the 45th of *Edward* the Third, whereby you would prove that the King in those Days had a Power of appointing, not only how many Citizens and Burgeses should appear in Parliament for each County, but also could name the Persons that should appear therein: I wonder how the Doctor could so impose upon your, or his own Understanding; since nothing is more apparent than that this Council at *Winchester*, to which they were Summoned, was no Parliament at all but a Great Council, as appears by the very Words of the Writ it self, which recites, "That whereas a Parliament lately at *Westminster*, had given the King a Subsidy of Twenty Four Shillings and Three Pence upon every Parish in *England*, that the King being willing to be better inform'd after what manner the Levy of this Tax might be soonest performed; and because it would be burthenfome for all the Great Men, Knights, Citizens and Burgeses, who came to the said Parliament to meet together again for this Matter, therefore he Ordained for the sparing their Pains and Expences, to have a Colloquy and Treaty with some of the same Members, and therefore names the very Persons whom he commands should appear before him at *Winchester*, to inform him and his Council of the best Manner and Form whereby the said Tax might be soonest and most conveniently levied, according to the Intent of the said Grant. So that nothing is more plain from the Writ it self, than that this Assembly was no Parliament; the proper Business of which is always to make Laws, give Money, or redress Grievances; none of which, it is apparent, were the Cause of this Meeting. So that those who were thus Summoned, did not appear as Knights of the Shires (their Power being expired at the Dissolution of the Parliament) but only as so many particular private Men, who by reason of their Interest in the Country, the King supposed could best inform him

P. g. 215.

in the Business above-mentioned; the like I may say for the Citizens and Burgeses then summoned. But that in the Reign of this King there were several Councils of this kind, which tho' no Parliaments, as having but one Knight, one Citizen, and one Burgeses, and only making Temporary Ordinances concerning Trade, and other Things of less moment, which were to be put in Practice for a Time, till they could be confirmed by the next Parliament, appears by the Ordinance or Statute of the Staple above mentioned. And of these Mr. Pryn in the first Part of his Parliamentary Register of Writs gives us divers Precedents; which he rightly judges, were only Writs of Summons to such Councils, and not to Parliaments; because there is no Summons in them *ad Parliamentum* (which was the constant Word then in use for the great Council of the Kingdom) but only *Colloquium & Tractatum* or *Concilium*, which was the Title then given to such Colloquies, Treaties, or Councils; as also because there are often but one Knight for each Shire; and no Citizens, or else but one for each City and Borough; as also from the Writs to those Bishops, which are summoned to such Councils, in which is no Clause for the summoning of the Deans, Arch-Deacons, and Proctors for the Clergy of the Diocese, as was then usual in all Parliamentary Summons; and lastly, because the Titles of the Writs for these Assemblies, are only *Summonitio ad Concilium*; all which your Doctor passes by very sily without taking any Notice. And this may serve for a sufficient Answer, not only to this, but all those other Precedents which the Doctor hath there heaped together of the like nature.

B. A. P.
Page 162.
Cl. M. 32.

Pag. 154. Ib.

M. But what say you to the last Record the Doctor has given us, whereby he farther proves that the King did likewise often use his Prerogative of discharging such Knights of Shires as he judged not fit to be chosen, or returned? As may appear by another Writ which he likewise gives us of the 7th of Richard the Second, directed to the Sheriff of Surry, reciting, "That whereas Sir Thomas Camois being a Banneret, was chosen one of the Knights of the Shire for the same County, yet because such kind of Bannerets were not wont before-Times to be chosen Knights of the Shire, therefore he commands them to cause another Knight to be chosen to come to Parliament in his stead. So that upon the whole Matter nothing seems plainer to me than that the chusing and returning of Knights, Citizens and Burgeses, being then but a Modern Institution, and proceeding wholly from the King's Favour, it was no wonder if they used a greater Liberty, and a larger Prerogative of nominating and discharging such Members of Parliament as they thought fit, than they have of late Ages taken upon them to do, when the Custom concerning these Matters became better settled by Process of Time. I have omitted several other Instances, which the Doctor there gives us of the King's Adjourning or Dismissing of Parliaments, to appear again upon his Summons without any Day appointed, which is contrary to the present Custom of Parliaments; as also of divers Records in the Reign of Edward the Second; the first a Precept to the Sheriffs to send up again such Members as had left the Parliament, or else to chuse others in their Stead; as also another Record of the same King, whereby it appears, that he not only by his sole Authority (and as far as it appears) without their Consent, not only Prorogued, or Adjourned the House of Commons, but also punished the Members for Absence. All which do farther prove that several of those Rights and Privileges which the House of Commons do now assume as their ancient and undoubted Birthrights, have been only granted from the Crown by the Indulgence or Connivance of some of our Kings, who were afraid to displease them, and which his Majesty may, for ought I know, reassume and exercise again whenever he shall think it convenient so to do.

Pag. 736.

F. As for this last Record, whereby you would prove from the King's discharging Sir Thomas Chamois from serving as a Knight of the Shire for Surry, that therefore he had a Power at that Time of discharging whom he pleased from serving in Parliament, the Writ it self shews the contrary, for it there recites, that the said Sir Thomas and his Ancestors had been *Bannerets*, which could not be meant of such *Bannerets*, as were Knighted in the Field; and therefore Mr. Selden in his Titles of Honour truly supposes, that this

Word cannot be understood of any other *Banneret* then a Parliamentary-Baron, or *Banneret* of that Time: "The Expression of *Hujusmodi Banneretti* shewing that it is not meant of all *Bannerets*, but such only as have that Title, either by Inheritance, or in such a kind as an Inheritance might be made of it, is apparent, by the precedent Words, *Banneretius est sicut complures Antecessorum suorum extiterunt*. And the said Sir Thomas, and his Ancestors, having been often called to Parliament among the Barons, therefore this Writ was issued to discharge him; for it appears by the first Volume of Sir William Dugdale's *Baronage of England*, that this Nobleman's Ancestors had been frequently summoned to Parliament, from the Reign of Henry the Third, as this Gentleman himself was likewise summoned to all Parliaments from this 7th Year of Richard the Second, to the 8th of Henry the Sixth inclusively, when he is supposed to have died. And if he himself were not summoned to Parliament as a Lord, before the 7th of Richard the Second, Mr. Selden in the same Place, gives us a sufficient Reason how this might be, viz. "That his Name, by reason of Non-age, or some other Cause, was omitted till the 7th of Richard the Second, for want of an Heir by Lineal Descent, [Entails of Honours by Tenure, not being then frequent.] And as it hath sometimes happened (in like Case) the Dignity being obscured by his abstaining from the Name of Lord, or Baron, the Freeholders of Surry chose him Knight of their Shire; after which, he being according to his Ancestor's Rights, summoned to Parliament as a Baron, there was a Necessity to discharge him, which was done under the Name of *Banneret*, and not Baron, it seems according to the use of that Time, because he then held not a whole Barony, or did not hold *per Baroniam*". So that whoever will but consider this Account Mr. Selden gives us of this Business, need not run to the King's Prerogative, for a Reason how this Peer came to be discharged from serving as a Member in the House of Commons.

But that *Banneret* then signified the lowest Degree of the higher Nobility, appears by the Statute of the 15th of Richard the Second, in the Second Parliament, in which, after the Archbishop, Bishops, Abbots, Priors, Dukes, Earls, Barons, immediately follow *Bannerets*, Knights of Shires, Citizens and Burgesses; all which are specified to have a Right of coming to Parliament of old Times; so that this Title of *Banneret* could not then signify what it hath ordinarily done since that Age: But a Baron's-Peer, at least such a one, had been himself, or his Ancestors, frequently called to sit among the Lords, but not holding by Barony, was not called a Baron, but *Banneret* only. Polit. St. p. 140.

So that I hope I have now fairly run through, and examined all the Precedents which you or your Doctor have been able to urge in this great Question; and I think, if you are as candid and ingenuous as I take you to be, you will not assert, that any of them do amount to a Proof, either that the Commons were never summoned from the 49th of Henry the Third to the 18th of Edward the First; or that the Writ of Summons he there produces, was to a Parliament and not to a great Council; or that the King ever took upon him to appoint what number of Knights, Citizens and Burgesses, should come to Parliament, or could nominate who they should be, or could discharge whom he pleased from serving as Members therein. All which your Doctor, I think, with greater Confidence, than right understanding of the true meaning of the ancient Writs and Records of Parliament, hath undertaken to assert. I beg your pardon for troubling you so long on these Heads, since the Length as well as Diversity of Records you have now cited, could not be answered in less compass.

M. I must confess, you have given pretty plausible Answers to most of the Authorities and Records I have now cited; yet I cannot assent so far as to come over to your Opinion, without a longer Consideration of the Strength of the Answers you have now given me to the Doctor's Authorities. But in the mean Time you would oblige me, if you could give me the rest of your Arguments, whereby you would undertake to prove that the Commons have been always an essential Part of the Parliament ever since the Conquest: For it seems to me, by what I have read out of our ancient Historians, that there is no express mention made of them by

by Name, in any Historian or Record, till the Reign of *Edward I.* and as for those Arguments Mr. P. hath given us to the contrary, methinks the Doctor hath given satisfactory Answers to them.

F. I think I have made it clear enough, that the Commons of *England* were a constituent Part of the *Wittena Gemote*, or Common Council of the Nation, before your pretended Conquest; and if it doth not appear that they were deprived of that Right by the *Normans* Entrance (which you have not yet proved) I think we may very well conclude, that Things continued in the same State as to the Fundamental Constitution of the Government, as well after your Conquest as they did before. Nor have you, as I see, proved any Thing to the contrary; since you confess, that as much a Conqueror as King *William* was, yet he altered nothing in those Fundamental Constitutions; the most that you pretend he did, being only in an Alteration of the Persons who were the Legislators, from *English* to *Frenchmen*, or *Normans*. So that upon the whole Matter, I think there is no need of any new Arguments to confirm this Truth; since the Commons of *England* claiming a Right by Prescription, of having their Representatives in Parliament; if you, nor your Doctor, nor none of those whom he follows, can prove by sufficient Authorities when this began, then I am sure you ought, if you were of the Jury in this Matter, to find for the Tenant in Possession; since that, together with a constant Usage Time out of Mind, is as well by your Civil as our Common Law, a sufficient Title to any Estate: Yet I doubt not but to shew you the next Time we meet, that the Doctor has not given such satisfactory Answers as you imagine, to most of Mr. P's best Arguments, proving this Right of Prescription to have been the constant Opinion of all succeeding Ages; to which I shall also add divers new Authorities, as well from Ancient Historians, as Parliamentary Records and Statutes. But since it is grown now very late, I beg your Pardon till another Opportuniay.

M. I thank you, Sir, for the Pains you have taken to satisfy me in this great Question; but pray come again within a Night or Two, that we may make an End of this weighty Controversy, and then we may proceed to what we at first intended, *viz.* Whether the King can ever lawfully be resisted; or whether by any Act he may commit, he can ever cease to be King.

F. I accept of your Proposal, and shall wait of you again as you appoint, but in the mean Time pray consider well of the Authorities I have now urged, and the Answers I have given to your Arguments, and then I hope there will be the less need of new ones.

M. I shall not fail to do it; but in the mean time am your humble Servant.

F. And I am yours.



Bibliotheca Politica.

DIALOGUE VIII.

Being a Continuation of the former Discourse concerning the Antiquity of the Commons in Parliament; wherein the best Authorities for it are proposed and examined. With an Entrance upon the Question of Non-Resistance, &c.

PART III.

M.  Am glad to see you again so soon; for indeed I am very impatient to make an end of this great Question concerning the Antiquity of the Commons appearing in Parliament; and therefore pray go on where you left off, and give me those plain Proofs you promised me, whereby you would make out that both the Knights of Shires, as well as the Citizens and Burgeses, had a Right to be there ever since the Conquest; for I desire to go no higher.

F. I thought I had said enough on that Subject at our last Meeting to satisfy any reasonable Person: I am sure more than you were able fairly to answer, especially as to my Replies to the best Authorities you brought from the Doctor; and therefore pray before we proceed farther, tell me your Opinion upon Second Thoughts, of those Authorities and Arguments I then gave you.

M. I must confess they do somewhat shock me; but I hope you will pardon me, if I cannot come over to you, without first hearing what may be said by the other Side; and to this End I have writ to the Learned Doctor for his Solution to several Difficulties, that I confess upon his Hypothesis I know not how to solve; but doubt not but to receive farther Satisfaction from him as to those Points in a short Time; but in the mean while, let us proceed in our intended Design, and examine the rest of the Arguments you have to produce on your Side.

F. I shall obey your Commands; and therefore in the First Place you cannot expect more than is in our Power to give you. For since all the Parliament Rolls and Writs of Summons, (except those of the 49th of Henry the Third) are lost, till after the Times in Question between us, you must be contented with what other Proofs we can produce, provided they are sufficient to satisfy any unbiass'd, indifferent Person. And to this End I shall sort the Authorities I intend to make use

use of into these Three Heads. First, I shall give you divers Quotations out of the most Ancient Writers, who lived in, or nearest the Time you prefix; *viz.* the coming in of the *Norman William*; and shall descend down in order of Time, as low as your Doctor's 18th of *Edward I.*

Secondly, I shall shew you from the Authorities and Testimonies of the Judges of almost all our Courts; of the House of Commons; nay, of several whole Parliaments, and the King himself, That the Commons had an undoubted Right of Sitting there by Prescription.

Thirdly, From the Consent of all our Neighbouring Kingdoms, who being governed by a King, and a great Council or Assembly of the Estates according to the *Gorbick* Model, the Commons had always from the Institution of the Government their Representatives in those Assemblies.

M. I much doubt that; but pray begin with your Ancient Historians; for as for my own Part, I must freely tell you, though I have looked them over very warily, yet I can find nothing in them concerning the particular constituent Parts or Members of our great or Common Councils, but the *Magnates*, *Optimates*, or *Principes*, *Comites* and *Barones*; all which, though you have at our last Meeting shewed me from some Authorities, that they may take in others, though not Noble by Birth; yet since these Words have been most commonly taken in another Sense, it needs some better Proof than to say in general, that meer Commoners were there, because those general Words may sometimes be taken in that Sense. And as for the Words *Clerus* and *Populus*, which I confess are often mentioned to be present at those Assemblies; the Learned Doctor, in several Places of his Answer to Mr. P. as also in his *Glossary*, hath plainly proved, that as the Word *Clerus* sometimes signifies the Bishops, and sometimes the Inferior Clergy; so *Populus* does also neither great nor little People, but only the Laity; and therefore as it is used and restrained, signifies the Lay *Plebs*, or the Lay *Magnates*. What I mean by *Plebs*, I shall shew you by and by; but that the Word *Populus* does not signify the Inferior Sort of People, or such as were inferior to Barons, Tenants *in Capite*, or Noblemen, the Doctor has very well proved from that Passage made use of by Mr. P. to prove the Commons to have been in that great Council which made *Henry* the First King, because it is said by *Mat. Paris*, that *Congregato Clero, & Populo universo*, &c. by which Word *Populus* he would understand the Commons alone distinct from the great Lords. But the Doctor very plainly shews him the Falleness of this Interpretation from the same Author, within Three Lines of the Place himself had cited; where the same Body of Men, which is but just before called *Populus*, is presently after called *Magnates*, *ad hæc Clero respondente & Magnatibus cunctis*; not one Word in this Place of any *Populus*; but the Great, or Noblemen, (that is, the Tenants *in Capite*) must be the People or Laymen here mentioned; and this same *Clerus* and *Populus* is by *Eadmerus*, speaking of a great Council held at *Westminster* in the Second Year of this King, called *Præmures Regni utriusque Ordinis*; or as *Florence of Worcester* words all the Orders of Men assembled in this very Council, *Omnes Principes Regni sui Ecclesiastici, & Secularis Ordinis*; the which the Doctor also proves from several like Passages in *Eadmerus*; in all which, as also in all other Authors the Doctor hath there cited, this *Populus* is explained to be the Earls, Barons, and great Men of the Kingdom only; that is, all the greater, as well as smaller Tenants *in Capite*. And though I confess at our last Meeting you brought very good Proof, that the Word *Populus* was more comprehensive among the *Romans*; yet though the *Roman Populus* comprehended all the People, as well Nobility as Plebeians; and that in *Scotland* it took in the Burgeßes of the Royal Boroughs, which hold immediately of the King; yet does it not follow that this Word must needs signify so in this Kingdom too, since in all Countries, not all the People, but only the Governing Part of it is used for the *Populus* in all Histories, Publick Acts, and Laws of those Kingdoms; thus in *Poland*, the *Populus* consists solely of great Councils of the Nobility and Senate, in which there are no Plebeians at all.

F. I hoped we had done wrangling about this Word *Populus*; but since I see you are not yet satisfied, I shall shew you more plainly, that by this Word used in our Ancient *English* Historians, is not only meant the great Lords, and Tenants *in Capite*, but another larger, and more comprehensive Body. And whereas you say that the Word *Populus* is still restrained by our Ancient Historians to the *Magnates*,

B. A. P. p. 26.
27. Tit. *Clerus*
& *Populus*.

P. R. C.
Fol. 55.

B. A. P.
Pag. 27, 28.

An. 10 D. 1102.

Ibid. r. 31, 32.

nates, Primates, & Principes Regni; all which Words do in their genuine Signification signify Great or Noble-men; and that tho' they are sometimes taken in a different Acceptation, yet that it lies upon me to prove that they are to be taken in my Sense. To this I must tell you, that the proving Part ought to lye wholly of your side; for since the Commons of *England* have been for above these Four Hundred Years constituent Members of our Parliament, (as is agreed on all hands) and that they also claim to be so by Right of Prescription, it still lies at your Door to prove the contrary, and to shew at what Time, and upon what Occasion they were first introduced: Which if you have not been able hitherto to perform, so as to give me any tolerable Satisfaction, you cannot blame me if I still keep my own Opinion, and believe them as Ancient as Kingly Government it self in this our Island.

But since I grant these Words *Clerus* and *Populus* are of a general, and equivocal Signification, their true Sense and Meaning is best to be understood from the Subject Matter that is treated of; as I shall shew you first from the Nature and Signification of the Words *Clerus* and *Populus*, according to the ancient Constitution of our Government, that they must signify many more than your Tenants *in Capite* alone; and then I shall confirm my Interpretation by the Authority of such ancient Historians as lived either in, or very near the Times I mention; and therefore I shall first prove it from the great Analogy there was between the *Clerus* and the *Populus*, so that if the *Clerus* took in more than your Tenants *in Capite* in our Common Councils, by the same Reason the *Populus* must do so too.

Now that this word *Clerus*, when used by it self, does not originally signify either the Bishops and Abbots alone, or the inferior Clergy alone, (as your Dr. asserts) is evident, because *Clerus* is a general Word, and comprehends all the Clergy of whatsoever Sort or Degree. Now that all the Clergy, as well the Superior as Inferior, had either themselves in Person, or else by their Representatives, a Place in the Saxon *Witten Gemots*, or *Mycel Synods*, and made together with the Laity one entire Council, or general Assembly, without the joyn't Consent of both which no Laws or Constitutions, whether Ecclesiastical or Civil, could be enacted: For Proof of this, we need go no farther than Sir *Henry Spelman's* first Volume of *Saxon Councils*, and particularly in the Councils or Synods of *Clovesho* first and second, that of *Kingston*, *Anno Dom.* 838. that held under King *Egbert*, and *Withlase* King of the *Mercians*, and that of *Winchester* under the same King *Egbert*, in which Tithes were first granted: In all which you will find that both the Clergy, as well the inferior, below the Degree of Bishops and Abbots, as also the Laity below your Earls, and great Aldermen and Wives, had a Share.

*Vide Spelman's
Counc. 1. vol.
from p. 332,
to 345.*

And that this continued so, both in, and after the *Norman* Times, appears by the first great Councils we have left us, that were held under the first Kings of the *Norman* Race.

M. I should be very glad to see that proved; for I always hitherto believed that none of the Clergy had then any Votes in the Great, or Common Council of the Kingdom, but those Bishops, Abbots and Priors, who all held *in Capite* of the King alone. And tho' it is true, there was also a Synod, or Convocation of the Clergy often held at the same Time when the Common Council of the Kingdom was assembled, yet was it no Part of that Council; and as the Clergy had nothing to do in the making of Temporal Laws, so had the Laity no hand in the making of Ecclesiastical Canons, or Constitutions; for the Pope's Legate or Archbishop of *Canterbury* often held these Synods at other Times when the Common Council of the Kingdom was not assembled at all; and thus it continued till the 25th and 26th of *Henry* the Eighth, when the King was first by the Clergy in Convocation, and afterwards by the whole Parliament, recognized and declared Supreme Head of the Church of *England* under Christ; and from that Time the King re-assumed the Power which the Pope had before usurped; and his Consent alone under the Great Seal is the only Ratification of all Canons or Ecclesiastical Constitutions passed in either of the Convocations of *Canterbury*, or *York*, at this Day.

F. I grant that for between Three Hundred and Four Hundred Years, the Matter of Fact hath been as you say; but that it was not so from the beginning, is also as certain. For first, in the *Saxon* Times, before the Pope's Usurpation came

in, it is evident from the Councils, or Synods, I have now cited, that the King had no more Power to make or confirm any general Ecclesiastical Laws or Constitutions without the Consent of the *Wittena Gemot* or *Mycel* Synod, consisting of the Clergy, as well as Laity, than he had to make Temporal Laws without it. So far were they in those Times from having any Notion of any Personal Supremacy in the King in Spiritual, more than in Temporal Matters; and that this continued so till the Pope did not only usurp upon the King's Right, but that of the whole Kingdom in general, may appear by those Memorials we have left us, of such Common Councils or Synods, in the Reigns of our first *Norman* Kings.

Anno Domini.

1077.

Sub Effigie

Æugenia, A. 3.

For the Proof of which, I shall begin with the Reign of *William* the First, in whose 14th Year the Privileges of the Abbey of *Westminster* were confirmed by that King in a Common Council, as well of all the Clergy, as Laity of the whole Kingdom; as may be proved by a Charter still to be found at large in the old Chartulary of the Abbey of *Westminster*, now in the *Cottonian* Library, collected by *Sulcardus* an ancient Monk of that Abbey, the Conclusion of which Charter of Privileges makes it very plain, of what Members this Council then consisted, and who gave their Consents to the Acts of it, which pray read, *In solemnitate Pentecostes habito Consilio in celeberrimo loco præscripti Westmonast. & à nostra regia Majestate conventis in unum, cunctis Regni nostri Primatibus, ad audiendas, & confirmandas, quosdam Synodalis decreti causas necessarias communi consensu maxime Episcoporum, Abbatum, & aliorum insignium Procerum, &c. Scripta est hæc Charta, & sigillata & ab ipso Rege, & supradictis personis testificata confirmat. & auctorizata in Dei nomine, &c.*

This being one of the first and most remarkable Councils of this King's Reign, I cannot let it pass without observing, First, that all the chief Men of the Kingdom were there, as well of the Clergy as of the Laity; and that the Words *Primates* and *Proceres* here mentioned, are very comprehensive, and may take in many others besides your great Lords and Tenants in *Capite*, I have already proved at our last Meeting but one. Secondly, Pray observe that this Charter of Privileges, tho' all of them concern meer Temporal Things, is authorized, confirmed by the common Consent and Subscriptions of all the chief Men, as well of the Clergy as Laity. From all which nothing can appear more plain to me, than that in the Reign of this King, the Clergy and Laity made one Common Council, without whose joint Consents nothing could be transacted in the Legislative; whether of Ecclesiastical or Civil Concernment.

A. D. 1093.

Ead. Hist. Nor.

L. 1. f. 26.

Spelmani Con-

cil. Vol. 2. f. 26.

I could give you more Instances of this kind in this King's Reign, but I make haste to that of his Son *William* the Second, in whose Seventh Year *Eadmerus* tells us, there was a Common Council held at *Rockingham*, about the Difference between Archbishop *Anselm* and the King; at which were present, *Episcopi, Abbates, Principes, ac Clericorum, ac Laicorum numerosa multitudo*; now that by *Principes* or Chief Men, may be here meant many more than your Tenants in *Capite*, I have already sufficiently proved; and that this *numerosa multitudo* must mean somewhat more than those, I shall prove farther by and by.

An. D. 1116.

Col. 1000.

Spel. Conc. To.

2. f. 28.

In the long Reign of *Henry* the First, I could give you many Instances of this kind, but let these suffice. In the 7th Year of this King, *Bromton* tells us in his History (speaking of the Council in which this King gave up his Right of Investitures) *Clero & Populo ad Concilium Londoniæ congregato*; and who this *Clerus* and *Populus* then were, he immediately explains himself thus, *Astantibus, Archiepiscopis, Episcopis, ceteraq; multitudine maxima Procerum, & Magnatum*; under which Words I have already proved, that divers others besides your Tenants in *Capite* might be comprehended, and their great Number shews them to have been more than those.

But tho' this Author does not here expressly say it, yet that the inferior Clergy were likewise at these Councils, appears from *Sim.* of *Durham*, and the Continuator of *Florence* of *Worcester*, Anno Dom. 1126. being the 25th of this King, where they both make mention of a Synod or Council held at *London*, at which were assembled the Archbishops, Bishops, Abbots, &c. (the Pope's Legate presiding over the Clergy,) and besides these, *cum innumera Cleri, & Populi Multitudine*. And the Continuator of *Florence* shews us the Manner of their giving their Consents to those Constitutions, as well Civil as Ecclesiastical, there made and published; they being proposed, with a *placet vobis*; and the Answer to them is,

Placet,

Placet, Placet, Placet, thrice repeated; which is very like the Form still observed in the Bishops and Lords giving their Consent to all Matters proposed in their House by saying *Content*.

So likewise the Continuator of *Florence*, in *Anno Dom. 1127*. being the 27th of this King, mentions such another General Council, or great Synod; wherein *William* Archbishop of *Canterbury* presided over the Clergy, and after the Recital of all the Superior Clergy as before, he thus proceeds, *Confluxere quoq; illuc* (i. e. to *Westminster*) *magne multitudines Clericorum & Laicorum, tam Divitum, quam Mediocrum, & factus est Convventus inestimabilis sedit etiam tribus diebus, acta sunt ibi de negotiis secularibus nonnulla, quedam quidam determinata, quedam dilata, quedam vero propter nimium aestuantis turbe tumultum ab Audientia judicantium profligata*. And tho' the Author gives us the Ecclesiastical Constitutions, yet it is plain from him, that Civil Matters were also transacted in this very Council, which consisted as well of the Superior as Inferior Clergy; as also of the Nobility, and Commons; which are all expressed under the general Words of *Divitum & Mediocrum*, and resemble the Phrases of the *Majores & Minores*; and the *des Greindres & des Meindres*, mentioned in the Statutes of *Marlbridge* and *Gloucester*; which Words were debated at our last Meeting.

Vid. Spel. Council. 2 Vol. F. 35.

In the Reign of King *Stephen*, there were also several Councils held of the same Sort; and particularly that of his Third Year, in which was granted a Charter of Confirmation of this King's, of the Privileges of the Abbey of *Westminster*, which is also to be found in *Sulcardus's* Chartulary above-mentioned; wherein after the general Words of *habito universali totius Angliæ consilio*, and a mention of the Pope's Legate (who presided over the Clergy;) it follows thus, *affuerunt etiam Comites, Regni mei & Barones quam plurimi, & innumera Cleri & Populi multitudo qui his omnibus interfuerunt, & Religioso favore voluntatem & Assensum, Auctoritati nostre pagine, & Privilegio præbuerunt, &c.*

A. D. 1138, 1139.

So likewise in an ancient Manuscript Chronicle of the Abbey of *Ely*, under *Anno Dom. 1139*. being the Fourth Year of King *Stephen*, there is a remarkable Passage, when speaking of a great Council then held at *London*, he expresses it in these Terms, *Concilio adunato Cleri & Populi*, (and then explains of what Members these did consist, viz. *Episcoporum, atq; Abbatum, Monachorum, & Clericorum*) *Plebifq; infinite multitudinis*. Now pray give me leave to make some Observation: from these Passages in all these ancient Charters and Historians; that besides these Bishops, Abbots, Earls and Barons of the Kingdom, there were also an innumerable Multitude of Clergy and People, or (as the *Ely* Chronicle words it) an infinite Number of Clerks and Commons. Now, pray tell me, what can be meant here by all these put distinct from the rest of the higher Orders, but the inferior Clergy, as the Deans, Archdeacons, who were then the only Proxies or Deputies of the Secular Clergy of the whole Diocese? And who can be meant by this infinite Multitude of People, or *Plebs*, (which naturally signifies the common People distinct from the higher Nobility) but the most considerable Freeholders, or Lords of Mannors, whether Tenants *in Capite*, or not, under the Degree of the higher Nobility, together with the Citizens and Burgeses of Cities and Towns; and who came not only as idle Spectators, since the Charter I last cited expressly mentions that they were not only present, but also gave their Assents to this Charter of King *Stephen's*?

Vid. Anglia Sacra f. 22.

M. And may I not with as good Reason ask you why these Words *Populus* and *Plebs* may not in the historical barbarous *Latin* of that Age serve only to express (not the Multitude, or Rabble, or meer common People, but) the whole Body of lesser Tenants *in Capite*, beneath the Dignity of the greater Barons?

F I will give you two very good Reasons for that; First, from the great Analogy there was then between the Members of the inferior Clergy, and those of the Laity or Commons; the former of which, even all the Abbots and Priors, Deans and Archdeacons, (except those few that held *in Capite*) with all the rest of the inferior Clergy already mentioned, holding only *in Frank Almoign*, and not by any Military Tenure at all. Now pray give me any sufficient Reason why the Laity should not also consist of all other Orders of Men who did not hold *in Capite* neither, and by whom I do not mean the meer Vulgar, or Rabble, tho' Freemen or Freeholders of small Estates, but the most considerable Freeholders or Lords of Mannors in *England*; or else the Knights of Shires, who, I suppose, represented not only themselves, but their Inferior Tenants whether Copyholders, or for Term of Years; as also the Re-

presentatives of all the Cities and Borough Towns in *England*: Now these might together with your Tenants *in Capite*, make so great an Assembly, as might very well deserve the Title (with an easy Hyperbole of *infinita* or *innumera multitudo*) as our ancient Historians express it.

B. A. I. p. 171. Whereas your Doctor's Tenants *in Capite*, could never in these first Times after this Conquest, amount to so great a Multitude; not being, by his own Confession, above 700 Persons, besides the Bishops, Abbots, and Priors, who did not make above 100 more, which could never deserve the Title of an infinite and innumerable Multitude.

Fig. 2. M. Neither your Notions nor your Authorities to prove it, do any way satisfy me; for in the first Place your Argument from the Analogy between the Clergy and Laity, who, you say, made up this Assembly, does not hold; for, tho' I grant there might be in that part of it which we call the Convocation, and was then called the Synod, all the Bishops, Abbots, and great dignified Clergymen; yet were not these considered as Ecclesiasticks, Members of the great Council of the Kingdom; but a distinct Assembly from it, which treated only of Spiritual Matters, and together with the Bishops and Abbots made Ecclesiastical Canons, as the Two Houses of Convocation do at this Day; yet meddled not at all in Matters of a meer Civil or Temporal Concern; any more than the Lay Council could meddle with Spirituals. And to let you see that this was true, it is evident beyond dispute, that this Ecclesiastical Synod was often assembled by the Authority of the Pope, or Archbishops of *Canterbury* or *York*, when the Common Council of all the Laity were not summoned at all; and so *vice versa* the Common Council of the Kingdom often met, when the Synod of the Clergy was not convened; as appears by the most ancient Writs of Summons to the Bishops we have left us; as particularly, the first Writ of this kind that is upon the Rolls, *viz.* That for the Bishops (which Mr. Pryn has printed in the First Part of his Parliamentary Register) in the 6th of King *John*, and which I have cited from the Doctor's Answer against Mr. Pryn at our last Meeting; in which Writ, tho' I grant there is a Clause for summoning the Abbots and Conventual Priors, yet there is none for the inferior Clergy.

Ald. Pag. 3. But in the next Writ, which the same Author has likewise Published, *viz.* That to the Archbishops of *York*, there is no Clause at all for summoning any of the Clergy as such, tho' 'tis true, there is underneath an *Eodem modo scribitur omnibus Episcopis, Abbatibus, &c. Comitibus & Baronibus*; which shews that this Writ was not to summon them in their Spiritual but Temporal Capacities. So likewise in the next Writ of Summons to Parliament, we have left us on the Roll, which is cited in Mr. Selden's Titles of Honour; as also in the same Parliamentary Register, and in Dr. B. against Mr. P. *viz.* That of the 49th of *Henry* the Third, to the Bishop of *Duresme*, without any Clause of Summons to the Clergy, whether Abbots or others. So likewise in the next Writ of Summons that is left us, *viz.* That of the 23d of *Edward* the First, (published also by Mr. Pryn) to the Archbishop of *Canterbury*, in which there is no Clause of summoning any of the Clergy; and tho' there immediately follows another Writ of the 23d of this King, in which I grant there is this Clause of *Pramunientes Priorem, &c. viz.* The Prior, Chapter, and other of the Clergy of his Diocese, to appear in Parliament; yet that they were no necessary part of it, but only of the Convocation, appears by the rest of the Writs of the Summons to Bishops, which Mr. Pryn has also given us in that Chapter; all which if you please to peruse, you will find, that in near 200 Writs to Parliaments or great Councils, the Clause of *Pramunientes Clerum*, is to be found in scarce half of them; which shews that the summoning or omitting them depended wholly upon the King's Pleasure, and so were no constituent part of the great Council or Parliament, as you suppose they were under the first *Norman* Kings; for then sure they would not have been omitted to have been constantly summoned in all Parliaments, as well as the Bishops and Abbots.

But to come to your next Argument from the Numerousness of these Assemblies, which you say could not be properly called *Numerosa*, or *Infinita Multitudo*, whereas all the Tenants *in Capite* as well Ecclesiasticks as Lay-men, did not amount in all to 800; there may be an Allowance made for this to the Monkish way of writing of those Times, who might call such a great, or more than ordinary Assembly of the Clergy and Tenants *in Capite*, an innumerable or infinite

infinite Multitude, when indeed they were but few more than our Lords and Commons are at this Day.

F. I pray, Sir, give me leave to answer what you have already said, before you proceed any farther, because what I have to reply to it, will be pretty long. In the first Place, you cannot with any reason (if you better consider of it) deny, that the Clergy, as well the Superior as Inferior, did, before your Conquest as well as long after, make but one Assembly or Body of a General Council; tho' sometimes sitting in several Places (as the Lords and Commons do at this Day) for the Words in the Old Book of *Ely*, are *Adunato Concilio Cleri & Populi*, which is to be rendred, the Council of the Clergy and Laity, being united and joined together, as I have already shewn this Word *Adunato* does always signify; as also by the Confirmation of that Charter of King *William's* to the Abbey of *Westminster*, and to which (tho' a Matter of meer Temporal Concernment) all the Clergy, as well as Laity, gave their joynt Consents, as appears by the Conclusion of that Charter, as also to that of King *Stephen*, but now cited; which they could never have done, had they not then made a Part of the same General Council, or Assembly.

Having proved to you that the inferior Clergy did anciently make a Part of the General or Common Council of the whole Nation, I shall now proceed to answer your Objections: 'Tis true, that for a great Part of some Kings Reigns, for want of the Writs of Summons to the Superior as well as to the Inferior Clergy, we cannot certainly tell, tho' we may presume it from the general Words of the Historians, whether the Inferior Clergy were summoned or not; yet this, I think, I may boldly aver, that wherever any ancient Author makes mention of the *Clerus* and *Populus* in general, being present at any such Common Council, it must necessarily mean, not the Bishops, and Abbots, or the Superior Clergy alone, or the great Lords and Tenants *in Capite* only, but those and the Representatives of the whole Nation, both Clergy and Laity taken together; as I think I have sufficiently made out.

Nor is your Objection considerable, from that Writ of the 6th of King *John*, that no Inferior Clergy were summoned, because only the Abbots and Priors are mentioned at the End of it. To this I answer, that (granting it to be a Writ of Summons to a Common Council of the Kingdom, which is not yet proved) the Omission of the Inferior Clergies being summoned, is no cogent Argument to prove they were not there; since for ought as you and I know, there might be other Writs issued to the Inferior Clergy, distinct from those to the Bishops and Abbots; which last used to have distinct Writs to each by themselves; and I may as well suppose these Writs to be lost, as you do that all the general Writs to the smaller Tenants *in Capite*, who were no Barons, and yet were to be all summoned, according to King *John's* Charter, are all lost. And as for the Abbots and Priors mentioned at the End of this Writ of King *John's*, they were such as held only *in Capite*, or else such as did not; if the former, this might be only a Council of Tenants *in Capite*, and none other; of which I grant there were many held in those Times, upon Occasion of Wars, Scutages, and other Matters; but if by these Conventual Abbots and Priors summoned by this Writ, you will mean all Abbots and Priors of whatever Tenure; then it appears plainly that this great Council consisted of many other Ecclesiasticks, than what held *in Capite*, and if so, why might not the Inferior Clergy as well make a Part of it?

But as for your next Authority, the Writ of the 49th of *Henry* the Third, which is certainly a Summons to Parliament, in which is no Clause of summoning the Inferior Clergy; this is no more an Argument than the former, since it might not then be the Custom to insert them in the same Writ with the Bishop, to be summoned by him; but they might have general Writs of their own directed to the Clergy of each Diocese. But that all the Inferior Clergy as well as the Superior appeared at divers Common Councils or Parliaments during this King's Reign, (which they could never have done without the King's Summons, tho' the Writs are lost) may appear from that great Council or Parliament of the 9th of *Henry* the Third: Whereunto as *Mat. Paris* tells us (in the Place, I have so often mentioned) were summoned *Clerus & Populus, cum Magnatibus Regionis, or Regni*, as *Mat. Westminster* words it; and in this Council was given by *omnes de Regno*, the 15th of all the Moveables of all the whole Kingdom. So that these

omnes

Rot. Stat. 25.
E. 1. M. 38.

omnes de Regno must take in all Degrees of Men, and consequently the Inferior Clergy too; since it is certain the Bishops and Abbots did never represent them in the House of Peers, or in Convocation, so as to lay any Taxes upon the Inferior Clergy without their express Consents. And this is the more evident, because this Tax was a 15th upon Moveables; and not a Tax upon Land, and consequently could never be imposed upon those of the Clergy, (who held in *Frank Almoign*, as all the Inferior Clergy then did, and do at this Day) by the Bishops and Abbots that held in *Capite*. And that these Charters were made by the Common Consent of the whole Kingdom; (and then certainly by the Inferior, as well as Superior Clergy,) may appear by the Confirmation of the great Charters, as also in the Preamble to the Statute of *Articuli super Chartas* (made, the one in the 25th, the other in the 28th of Edward I.) in both which it is expressly recited, that the great Charters of Liberties, and the Charters of Forest, were made *per Commun Assent de tout le Royalme, en Temps nostre Pere*; and if by the Common Assent of the Realm, then sure by that of the Inferior as well as Superior Clergy, since the Bishops and Abbots, who sat there only by their Baronies could never represent them.

That the Inferior Clergy were also summoned to Parliament, in the 39th of Henry III. appears from the *Annals of Burton*, in *Anno Dom. 1253*. Where that Author, (who lived at that Time) relates, that the Inferior Clergy then appearing in Parliament, sent Messengers to the Pope concerning the intolerable Grievances they then lay under; among which, the first Grievance set forth by the Procurators of the Clergy for the Diocese of *Lincoln* is this, *Quod decima beneficiorum suorum Domino Regi fuit concessa ipsis non vocatis, maxime cum agitur de aliquo obligando necessarius est ejus expressus consensus*: By which it appears, that the Inferior Clergy then claimed it as their undoubted Right by the Law of the Land, not to be Taxed either by the King, or the Pope, without their express Consents; and they contended so hard for it, that they have preserved this Right even to this Day, when they now give their Votes to the Choice of Knights of the Shires; tho' till the late King *Charles's* Reign, they were never Taxed without the Consent of their own Procurators in Convocation. And this may serve to enlarge your Understanding, and to shew you in what Sense the whole Clergy, as well the Inferior as Superior, did anciently make the Third Estate in Parliament, which was more Comprehensive than the Bishops and Mitred Abbots alone, who sat in the Upper House only *per Baroniam*, by Reason of their Baronies; tho' in the Synod or Convocation of the Clergy, they acted only as Ecclesiastical Persons; where they also joined in the making of Ecclesiastical Laws, and giving Taxes; which last you cannot deny, but to be a meer Temporal Thing.

M. You may be so far in the right; yet tho' the Inferior Clergy often joined with the Common Council of the Kingdom, in giving the same Taxes, yet this was by, and upon themselves alone, and they had no hand in making of Temporal Laws, and giving Taxes for all the rest of the Kingdom; and I challenge you to shew me any Precedent within these Five Hundred Years, that the Inferior Clergy ever made the Third Estate in Parliament, or that their Consents was ever asked to the making of Temporal Laws; since the Bishops have been always look'd upon till of late, as the only Representatives of the Inferior Clergy in Parliament. How else could they be obliged by general Statutes or Acts of Parliaments? Since according to your own Confession, they gave no Votes at the Election of Knights of Shires, but since the Return of King *Charles II.* So that if they had ever joined in this Legislative Power (as you suppose they anciently did) I cannot see why they should not have kept it to this Day.

F. I grant indeed, it has been otherwise between 300 and 400 Years; but that it was not so from the Original Institution of the Government, is also as certain: For that the *English* Common Councils consisted of all Sorts and Degrees of Ecclesiasticks you must allow; since before the coming in of the *Normans*, the Bishops and Abbots did not sit in the *Mycel Synods*, as Temporal Lords, is generally acknowledged; and yet even after they came to sit among the Lay Peers in the great Council of the Nation by virtue of their Baronies, the Inferior Clergy also gave their Assents to the making of Temporal Laws, and giving Taxes; I have proved by such Authorities, as I do not see you are able to Answer; and for further Proof of this, to shew you their coming was continued down to the Reign of *Henry III.* see Sir *H. Spelman's* Councils, Second Volume, where you will find that they were
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in that great Council at Clarendon, when those famous Constitutions were made, ^{P. 64.} as appears by these Words in *Mat. Paris* at the end of these Constitutions. *Hanc Recognitionem, sive Recordationem de consuetudinibus & libertatibus in quibus Archiepiscopi, Episcopi, Abbates, Priores, Clerus, cum Comitibus & Baronibus, & Proceribus cunctis juraverunt.* So likewise at the Council of Gaintington in the 34th of this King; Roger Hoveden has in his History these Words, *Dominus vero Rex statim postquam in Angliam applicuit magnum congregavit Concilium, Episcoporum, Abbatum, Comitum & Baronum, & aliorum multorum Clericorum, quam Laicorum, apud Gaintington.* And *Mat. Paris* in the Year 1185, (being the 31st of this King's Reign) mentions a Common Council of the Kingdom then called at Clerkenwell, where *Convocatus est Clerus & Populus, cum tota Nobilitate*; which Dr. Heylin in his Stumbling-Block of Disobedience thus translates; the Clergy ^{P. 641.} and Commons, together with the Nobility being summoned. And in the 1st of Richard I. R. Hoveden also tells us of a great Council held at Pipewell Abbey in Northamptonshire, where the Archbishop of Canterbury produced a Charter of King William I. *Coram Rege, & Universis Episcopis, Clero, & Populo.* And an Ancient Charter of *primo* of King John, (now in the Archbishop of Canterbury's Library) Entituled, *Charta Moderationis feod. magni sigilli*, recites the said King to have been Crowned, *Mediante tam Cleri quam Populi unanimi consensu, & favore.* And tho' the rest of his Reign was turbulent, yet the Author of the Manuscript *Enlogium*, quoted by Mr. Selden, in his Titles of Honour, mentions a great Council at London, in the 16th Year of King John, where the Archbishop of Canterbury ^{P. 587.} was present, *Cum toto Clero, & tota secta Laicali*, i. e. (says Dr. Heylin in the same Place) "The Clergy of both Ranks and Orders, with all the Laity (called here *Secta Laicalis*) and the Lords and Commons had then their Places in Parliament. And the Doctor proceeds thus, "And in Possession of this Right the Clergy stood "when *Magna Charta* was set forth by King Henry III. Wherein the Freedom, "Rights, and Privileges of the Church of *England* (of which this evidently was "one) was confirmed to them; (*i. e.* the whole Clergy in general.) I have here shewed you, what Dr. Heylin's Sense was; to let you see that a Person of great Learning, and a high Churchman, thought it no Herefy to be of our Opinion, and to maintain as he does all along in that Chapter, that the Inferior Clergy and the Commons were a *Constituent* Part of the Common Council or Parliament long before the 49th of Henry III. and that the Inferior Clergy continued to be so, till the Reign of Henry IV. at least.

But that their Consents was also anciently asked in the making of Laws, we need go no farther than the Authority I have now given you from the Continuati-
on of *Florence of Worcester*. And farther, that they were once a Part of this great Council or Parliament, besides the Testimony of the *Modus tenendi Parliamentum*, (who tho' he be exploded, as an ancient Author, yet certainly is a good Witness for his own Time, *viz.* That of Edward III.) where the *Procuratores Cleri* are reckoned among the *Constituent* Members or States of Parliament; which is also confirmed by the Two first Writs of Summons we have left us on the Rolls, *viz.* the 23d of Edward I. wherein this Clause of *Præmunientes Clerum* is particularly express'd; which pray read from your Doctor's Answer to Mr. P. *Præmunientes Priorem & Capitulum Ecclesie vestre, Archidiaconos totumque Clerum vestre Diocesis sci- Rot. Claus. m. Cientes quod idem Prior & Archidiacon. in propriis Personis suis, & dictum Capitulum 4. de pso. per duos Procuratores idoneos plenam & sufficientem potestatem ab ipsis Capitulis, & B. A. P. p. Clero habentes, una vobiscum, inter sint, modis omnibus tunc ibidem, ad tractandum, 155. ordinandum, & faciendum nobiscum, & cum ceteris Prelatis, & Proceribus & aliis Incolis Regni nostri qualiter sit hujusmodi periculis obviandum.* (*viz.* The Dangers in the Writ mentioned to be threatned from France.) And that this was not the first Time this Clause of *Præmunientes* was inserted in the Writs of Summons to Bishops, might be easily proved, had we all the Writs of Summons before the 23d of Edward I. as well as since. But we may hence observe, that the Inferior Clergy are not only summoned to treat with the Prelates, but are as well as they, here authorized to treat, ordain and act with them, and the Lords and Knights, Citizens and Burgeßes (for so your Doctor himself here in the Margin translates, *Aliis Incolis Regni.*) And how they could thus consult and act with them, if they had not been then, as well as the Prelates, a Part of the same Body of the great Council or Parliament of the Kingdom, I confess surpasses my Capacity to understand. Nor is this Clause found in this Writ alone, but also in the Writs of the Bishops Summons

P. 120.

to Parliament as low as our own Times. And that these Writs were not a Convocation, but Parliament, appears in *Pryn's* Parliament Register plainly, by the Letters of Procuration made by the Prior and Chapter of *Bath* to *William Swynham* and *John de Merston*, appointing them to appear and act for them as their lawful Procurators in the Parliament summoned *Anno Dom. 1299.* being the 27th of *Edward I.*; which is of a different Form from another Letter of Procuration of the same Prior and Chapter, *Anno Dom. 1295.* (31 *Edward I.*) to their Procurators therein named to act for them in the Convocation then summoned at *Westminster*; the same Difference is also observed in all the Writs of Summons to Convocation, different from those whereby the same Persons are summoned to Parliament; the former being directed only to the Two Archbishops, or their Vicar-Generals, to summons all the Bishops, Abbots, Priors, and Clergy of their respective Provinces; without any particular Writs issued to any other Bishops, Abbots, Priors or Clergymen, as in Summons to great Councils or Parliaments; wherein there are commonly particular Orders to the Bishop to warn all the inferior Clergy in the manner but now mentioned; as *Mr. Pryn* very well observes, in his First Part of his said Parliamentary Register; where you may see, there is a Writ of Summons to Parliament, of the 31st of *Edward III.* to the Archbishop of *Canterbury*, reciting that he intended a Parliament, for divers arduous and urgent Businesses concerning Himself and Crown, and the necessary Defence of the Kingdom and Church of *England*; and then proceeds thus, *Et quia Negotia prædicta per quam Ardua sine Maxima deliberatione tam Prælatorum & Cleri quam Magnatum, & Communitatis ejusdem Regni, &c.* And therefore it behoved him to summon the said Clergy, Great Men and Commons; and then requires him to summon all the Bishops, Abbots, Deans, and Priors, and Archdeacons, to appear personally, and the rest of the Clergy by two Procurators; with full Power *ad tractandum, & consulendum s. per præmissis una vobiscum, ad consentiendum.* *Illis quæ tunc ibidem super dictis negotiis divina favente Clementia contigerit ordinari.*

P. 106.

P. 60, 61.

Rot. Claus.

31. Edw. 3.

m. 21. Dorfo.

M. But what can you say to their being omitted to be summoned in divers Writs to Parliament, as appears in *Pryn's* Register you now cited; and from whence himself has there made this Observation, "That there is no Clause of *Præmunientes*, &c. in any Writs of Summons to Councils of State, but only to "Parliaments, and that not always, but at the King's Pleasure. Which shews plainly, that tho' they were sometimes summoned as a Part, yet were certainly no essential constituent Part of this general Council, since they were omitted in so many of them; and had they been always a Part of this great Council; pray tell me, how they came to lose this Right; since the Clergy in those Days were not wont to lose any Right or Privilege they enjoyed.

P. 107.

F. I have already granted, that tho' the inferior Clergy have been no necessary Constituent Part of Parliament, for divers Ages last past, yet does it not follow, that therefore they never were so; since they have lost this Right by Degrees. And I shall now shew by what Steps it might have happen'd. First, therefore pray observe, that anciently all Abbots, and Priors whatever, as well those that held in *Capite*, as those that held in *Frank Almoign*, were all summoned alike to the general Councils of the Kingdom; as appears by the first Councils after your Conquest, that we have any Monuments of; nay it also appears from that very Writ of the 6th of King *John*, (if it were a Writ of Summons to Parliament) which as I have already proved at our last Meeting it is most likely it was not, whereby the Bishop is to summon all the Abbots and Priors of his Diocese, none excepted. And tho' I grant that in the next Writ of Summons of the 26th of *Henry III.* to the Archbishop of *York*, there is no Clause expressed of summoning the Abbots and Priors, and other Clergy of his Diocese, yet it is much to be doubted, whether this were a Summons to Parliament, or not, being without any Title either of *ad Parlamentum* or *Concilium*.

But that the Abbots and Priors, as well those that held in *Capite*, as those that held in *Frank Almoign*, were summoned to the great Parliament of the 49th of *Henry III.* appears by that List of their Names, which both *Mr. Pryn*, and the Doctor have printed from the Roll. Nor do I believe that this was the first Time that all these Abbots and Priors, being 101 in all, were summoned to Parliament, notwithstanding your Doctor's Fancy, that *Simon Montfort* summoned so many of them, only because he was sure of them; since if we had the Rolls of the foregoing Years, as well as of this, we should perhaps find little or no Difference. For by another

Parliament
Regist. Part 1.
p. 106. 108,
109, 110,
B. A. P. p. 138,
139.

another List of the Abbots and Priors, which the Dr. himself has given us of the 23^d of Edward I. to the same Parliament above-mentioned, when the Inferior Clergy were likewise Summoned; there appears to have been Seventy Abbots and Priors summoned to this Parliament, of which not a third Part ever held *in Capite*; and tho' divers of them then pleaded Exemptions, yet they were many of them such as held *in Capite* as well as those that did not; as the Abbots of *St. Edmund's-Bury*, *Waltham*, *St. Albans*, *Evesham*, &c. all which, as it is notoriously known, held *in Capite*, and were commonly summoned to all Parliaments afterwards. Now pray see how all this numerous Train of Abbots and Priors (which Mr. Pryn confesses to have sometimes amounted to 122) who were summoned to some Parliaments and great Councils, came to be omitted; which is to be ascribed chiefly to their own Petition and Desire, when their constant Attendance in Parliament when held every Year, and frequently oftner, was counted a Burthen rather than an Advantage, by reason of the great Charge and Trouble of coming to those Assemblies, and their being bound to contribute to the general Aids that were then given the King. And thence it is we find on the Rolls so many Discharges upon their Petitions in Parliament, that they did not hold of the King by Barony, nor *in Capite*; nay the Abbot of *Leicester*, after having served in no less than 50 Parliaments, yet in the 25th of Edward III. procured a Writ of Exemption from the King, *Quod non compellatur venire ad Parliamentum*; the Lords in Parliament easily giving way to it, since they knew that the fewer Hands the Legislative Power was reduced to, the greater still were theirs that remained. To which may be added the King's Pleasure, who by Degrees began to omit summoning of divers of the smaller Abbots and Priors, before summoned; since it has been the Policy of divers of our Kings to reduce their great Councils or Parliaments, especially the Peers, into as few Hands as they could, because then they are most easily managed; and the Abbots and Priors never complained of it, for the Reasons already given. Thus most of these came to be struck off by Degrees, till at last, of all this numerous Company of Abbots and Priors, there were in the Reigns of Edward III. Richard II. and Edward IV. and even to the Dissolution of Monasteries under Henry VIII. no more than 25 Abbots and Two Priors, *viz.* the Prior of *Coventry*, and of *St. John of Jerusalem*, summoned to Parliament. I have dwelt the longer on the History of these Abbots and Priors, because it sufficiently confutes your Doctor's Notion, of none but Tenants *in Capite*, appearing in Parliament.

Ibid. 156, 157.

*Parliament R-
gift.* 141.

Ibid. p. 142.
Vid. Selden's
*Titles of Ho-
nour*, p. 731,
to 735.

Ibid. 141.

Ibid. p. 154.

But to give you some Account of the Inferior Clergy, how they likewise might come to be often omitted out of the Writs of Summons to great Councils, and not to make a constant Part of the Parliament, but only of the Convocation. This might happen two or three ways, and that without any positive Law for it. As in the first Place, pray consider the vast Increase of Power which fell to the Bishops, after Henry I. had given up his Right of Investitures to the Pope; by which means they depended not at all on the State, and so took upon themselves a greater Power of imposing upon, and making Temporal Laws for the Inferior Clergy in Parliament, as if they had been their Representatives; yet they could never represent all the Abbots and Priors, who held in *Frank Almoign*, for the Reasons already given, as also because most of them were exempted from their Jurisdiction: But that the Bishops could never impose Taxes upon the Inferior Clergy at their Pleasure, without their express Consents in Parliament, or Convocation, appears by this memorable Writ of 9th of Edward II. to the Archbishop of *Canterbury*, which Mr. Pryn has likewise given us; by which it appears, that divers of the Clergy had consented to grant the King a Subsidy in the precedent Parliament, but only by Reason of the Absence of the said Archbishops, and others of the Prelates, and Clergy, it could not then be done; and therefore the Archbishop is thereby ordered to call a Convocation for that Purpose; which had been needless, if the Bishops alone could have taxed the Inferior Clergy in Parliament or Convocation, without their express Consents: So that it is plain, that in that Age they still retained a great Share of the Supream Power, *viz.* of not being taxed, unless by Representatives of their own, either in Convocation or Parliament; as it continues to this Day.

But to shew you farther, how the Presence of the Inferior Clergy, and consequently their summoning to Parliament, became less necessary, we must have recourse to the Bull of Pope *Boniface* the 8th in the 24th of Edward I. by which he forbade all the Clergy of the *Western Church*, as well Superior as Inferior, to give

Vid. Mat. West.
Ann. 1296.
p. 405 to 408.
Chyon. Will.
Ti.orn. Col.
1965.
Walsingham.
Anno Dom.
1296, 1297.

any more Taxes or Subsidies to Temporal Princes, without his Holiness's License; whereupon the King summoned the Bishops and Clergy to Parliament, at *St. Edmund's-bury* in the 24th of his Reign; where when they then refused to grant him any Supplies, he then, (as all the Historians tell us,) held his Parliaments at *Westminster*, *Cum Baronibus suis*, *excluso Clero*, without either Bishops, Abbots or Inferior Clergy. Which was the first Precedent of this Kind, that we ever read of in this Parliament; the King with the Consent of the Lay Lords and Commons seized all the *Temporalities* of the Clergy, as well Bishops as others, and put them out of his Protection, until they were forced to redeem themselves by paying a 5th Part of their Moveables: for doing of which they were afterwards forced to procure the Pope's Absolutions; some of which Mr. *Pryn* has given us in his said Register; and yet for all this, the Pope maintained this Power over the Clergy for the future; so that they could not be taxed without his express License, (which since it could not always be obtained) no wonder if our Kings did more frequently omit summoning any more than the Bishops, and Abbots, who were bound to appear in Parliament by their Tenures; and so left out all the inferior Clergy as useless: The main Business, and Cause of their summoning to Parliament, *viz.* giving of Money, being now taken away by the Pope's usurped Power. Tho' whenever his License was obtained, yet that their own express Consents in Parliament or Convocation was necessary to this end, appears by that Passage in the *Annals* of *Burton* in *Anno* 1255. already cited; when the inferior Clergy being extravagantly oppressed between the Pope and King, they sent express Messengers when they met in Parliament, who were to set forth their Grievances to his Holiness. I have given you as good an Account as I am able, how the Inferior Clergy, which as well as the Superior, did once make a *Constituent* Part of our great Councils before the Conquest, nay for above 200 Years after, did at last cease to be so, partly by the prevailing Power of the Bishops, partly by the Usurpation of the Pope; tho' chiefly by their own Silence and Consent, not complaining of their want of Summons to Parliament, as long as they could scape Scot-free, and all the rest of the Kingdom pay Taxes. Notwithstanding which, the Clause of their acting and consulting with all the rest of the Estates in Parliament, still remaining in the Writs of Summons, is a sufficient Monument to Posterity, to prove their ancient Right.

Vid. Dr. Burnet's History of the Reformat. in the Collection of Records, ex MS. Dr Stiltingfleet, p. 117.

And the Clergy of the Lower House of Convocation was so sensible of this, that among certain Petitions by them made to Dr. *Cranmer* then Archbishop of *Canterbury*, and the rest of the Prelates in the higher House of Convocation, in the Reign of King *Edward* the Sixth, and the Second Article of which runs thus, "Also that according to the ancient Custom of the Realm, and the Tenor of the King's Writ for summoning of the Parliament, which now and ever have been directed to the Bishop of every Diocese, the Clergy of the Lower House of Convocation may be adjoined; and associate with the Lower House of Parliament; or else, that all such Statutes and Ordinances as shall be made concerning all Matters of Religion, and Causes Ecclesiastical, may not pass without the Sight and Assent of the Clergy. And there is in the same Place a Second Petition; as also a Paper of Reasons offered to Queen *Elizabeth*, and after to King *James*, to the same Effect.

Ibid. p. 118, 119.

And lastly, to shew you, that the Government of the Church and State of *Scotland* was anciently all one and the same in respect of their Clergy as well as Laity, with that of *England* in their great Councils or Parliaments, appears by the Agreement between King *Edward* the First, and the States of *Scotland*, concerning the Marriage of his Son Prince *Edward* with the Princess of *Norway* then Heiress of *Scotland*, which is published at large in Mr. *Pryn*'s First Volume of the Pope's Usurpation, where you will find this Agreement to have been made between the said King *Edward* *ex una parte*, & *venerabiles Patres custodes*, (scil. *Scotia*) *Episcopos, Abbates, & totum Clerum*; *nobiles viros, Comites & Barones, totamque Communitatem Regni Scotia*, *ex altera, de matrimonio contrahendo, &c.*

P. 396.

From whence you may observe, that as the same Stile was observed there in the Titles of their general Councils or Parliaments as with us; and as the inferior Clergy there put after the Bishops and Abbots did not hold *in Capite*, but *Frank Almoign* in that Kingdom; so likewise by the same Analogy between the lowest Temporal State with the Spiritual, the Commonalty of *Scotland* here stiled *Com-*

munitas

munus Scotie could not then consist only of Tenants *in Capite*, as your Doctor, and those of his Opinion suppose it did.

M. I must confess you have shewn me more for the Inferior Clergies being once a *Constituent* part of the Parliament, than ever I knew before; I will take Time farther to consider them: But that the Word *Populus* must needs then take in any more than the Tenants *in Capite*, I much doubt; since the other Word *Plebs*, which you so much insist upon from the old Book of *Ely*, signifies no more than *Populus*, which as the Doctor shews us in his *Glossary*, " in it self signifies neither great nor little People, but only Laity; and therefore as it is used and restrained, signifies either the Lay *Plebs*, or the Lay *Magnates*, as I can shew you by several Examples; as particularly out of *Mat. Westminster*, Anno Dom. 1295, 23d Edward I. where speaking how the Pope's Legates were received in England, who came to make up the Differences between England and France; he thus relates their Reception, *Quos in Regno Anglie applicatos exceptit Plebs debito honore, ac cito per Regem apud Westmonasterium Primatum, & Optimatum suorum Caterua*. Here the *Plebs* were the Great or Chief Men of the Laity; that is, the Earls and Barons which he had called to *Westminster*, who so honourably received these Two Cardinals.

B. G. p. 11

Ed. 424. N. 20

Ed. 430.

B. G. p. 34

So likewise the same Author, Anno Dom. 1297. 25. Edward I. " The King and Barons being at some Difference about the Observation of *Magna Charta*, " and the Charter of Forest, speaking how the King declared that he intended to observe those Charters; after this he relates, that the King thereupon required to be given him by the *Incole* or Inhabitants, the Eighth Penny; and says thus, *Articulos in predictis Chartis contentos, innovari insuper & observari Rex Mandavit, exigendo pro hac Concessione ab Incolis Octavum denarium sibi dari, qui mox Concessus est a Plebe, in sua Camera tunc Circumstante; petit etiam a Clero subsidium. Qui respondit se velle summo Pontifici Literas Supplicatorias dirigere pro Conserendi Licentia obtinenda*. So that the *Plebs* here mentioned by the Historian were only the Lay Nobility that stood about the King in his Chamber. Now pray consider, that the Word *Plebs* is of a much more vulgar Signification than *Populus*, so that if the former did not signify the Commons as now understood, the latter cannot do so. And therefore I see no Reason to suppose that these Words must signify the Commons. The like Error, I must tell you by the way, the Gentlemen of your Opinion have fallen into, concerning the Word *Vulgus* in the old Coronation Oath in *Latin*, when they ignorantly Translate these Words in the old *French* Oath, *les loys les quelles ly la commuante aura eleu, leges & Consuetudines quas vulgus elegerit*, to the great Confusion of this Nation in the beginning of the late Troubles: Whereas the Community here understood in this Oath, was the Community of the Bishops and Abbots, Earls and Barons, and great Men, and the whole Body of Tenants *in Capite*; expressed before in this Oath by *Clerus*, and *Populus*; for by them alone could these Demands be made for the *Vulgus*; i. e. the Multitude or Rabble could never come near to make these Demands at so great and splendid a Solemnity.

F. This is but to urge the same Thing over and over again; for that under the Word *Populus* were also comprehended the Commons, I have already sufficiently proved, and can yet prove it further, from divers Historians and Records, both of Henry III. and Edward I. and Edward II. Reign. In the First Place therefore I must still put you in mind of that Passage so often cited from *Mat. Paris*, in the 9th of Henry III. where the Members of that Common Council in which *Magna Charta* was granted, is said to be *Clerus & Populus cum Magnatibus Regionis*; or as *Mat. Westminster* in the same Year, almost in the same Words, *Clerus & Populus cum Regni Magnatibus*; with both which also agrees the Manuscript History of Walter of Coventry, who speaking of this very Council of 9th of Henry III. relates it thus; At the Purification of the Virgin, there assembled at London the *Proceres Anglie ibique tractatu diffusore habita cum Clero & Populo*, the King then granted the Liberties of the great Charter, and that of Forests; and that there was granted à Comitibus & Baronibus, Clero, & Populo, *ibidem Præsentibus quinta decima omnium mobilium de Communi Assensu*. Whence pray observe, what I before minded you of, that this Tax, as it was a general one upon all the Moveables of the Kingdom, took in all Sorts of Persons, and so could never be given by the particular Order of the Doctor's Tenants *in Capite*, since it did not concern Tenures at all; and was levied on those that did not hold by Knights Service, as well as upon those that did

Ed. 323.

Ed. 284.

But the Author of the *Annals* of the Abbey of *Burton*, is more full in this Point; for in *Anno Dom. 1255*, being the 39th of *Henry III.* he tells us, a Parliament was held at *Westminster*, *Convocatis ibidem Episcopis, Abbatibus, Prioribus, Comitibus, & Baronibus, & totius Regni Majoribus, in quo petebat [Rex] a Clero & Populo, de Laicis feodis suis sibi suffragium exhiberi, &c.* (*viz.* For the Business of *Sicily*;) and then goes on thus, *disponens de suo iniquo Consilio hoc prius a Clero, & postmodum a Populo Majori & Minori extorqueri.* From which Passage I shall observe, *First*, That all the Clergy in general, as well the Bishops and Abbots, as Inferior Clergy, are here stiled *Clerus*. *Secondly*, That the Nobility and Commons, or whole Body of the Laity, are all together called *Populus*. *Thirdly*, That this *Populus* is there also distinguished into the *Major*, and *Minor*; now as by the *Major* can be meant none but the greater Nobility, so the *Populus Minor* can signify none, but the Commons in general; unless you will suppose that the King's Design was only to extort Money from the Tenants *in Capite*, and no others.

M. 20.

But to put it further out of all Dispute, that this Word *Populus*, when put after and distinct from *Magnates Barones*, and the like, in our Ancient Historians and Records, does signify the Commons alone; I shall prove to you by the Patent Roll of the 19th of *Edward I.* (the Year after your Doctor supposes the Commons were called to Parliament) where there is a Writ directed, *Baronibus, Militibus, & Liberis Hominibus de Wallia*, reciting that the *Comites, Barones, & Populus de Regno*, had lately freely granted a 15th of all their Moveables, and therefore desires like Aid from the *Welch*; now nothing can be plainer, than that by *Populus* in this Record must be meant the Commons; and yet it is also as evident from another Record now in the keeping of the Remembrancer of the *Exchequer*, that this 15th was granted the Year before in the 18th of this King (the very Time whence Dr. B. dates the constant Summons of the Commons to Parliament;) for by this Writ, or Commission, he appoints Commissioners for the Collecting of that 15th of all Moveables; which the King thus recites the *Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, & omnes alij de Regno, nunc sicut alias de nobis & Progenitoribus nostris liberaliter fecerunt*, to have lately freely granted him; which can be no other than that mentioned in the Record of the 19th; unless you can suppose that there was a 15th granted Two Years together, which is very unlikely, and more than the Nation could then well pay.

M. 20.

So likewise by the Parliament Roll of 1 *Edward III.* it appears that *Hugh le Despencer, Jun.* had been in the Reign of his Father, *Per Considerationem Parium, & Populi Regni, & per Assensum Domini Edwardi tunc Regis Angl.* exiled and disinherited for ever, as a Traytor to the King and Kingdom; that is, he was banish'd by the joint Consent of King, Lords and Commons. Now if *Populus* in these Records signifies the Commons after the Time you own they appeared in Parliament, I would be glad to see some better Reasons than you have hitherto given me, to prove that this Word could not have the same Signification before the 49th of *Henry III.* or 18th of *Edward I.* Though I grant that *Populus* does also sometimes signify both Lords and Commons; as appears from *Mat. Westminster*, where relating how King *Edward I.* in the 24th Year of his Reign, made his Son a Knight, then he tells us, *Pro hac Militia filij Regis Concessus est Regi Tricesimus Denarius a Populo & Clero, Mercatores vero Viceesimum concesserunt.* Yet that the Commons had also a share in this Grant, the Doctor himself acknowledges in his *Glossary*, under the same Heads in these Words; "It is evident from this Record, (meaning that of the 34th of *Edward I.* above-mentioned) who were the *Populus*, or People intended by the Historian in this Place, to wit, the *Comites, Barones, & alij Magnates, nec non Milites Comitatum.* Now I desire to know whether the Knights of the Shires were not then Commoners as well as now, though reckoned among the *Magnates*, and as a Superior Order to the Citizens and Burgeslies, here called by a general Word *Mercatores*, who then gave a 20th Part of their Moveables by themselves?

But that the Word *Plebs* does not only signify the Lay Nobility, but the Commons too, in both the Quotations you have made use of out of *Mat. Westminster*, is also as plain; for in the first Instance concerning the Reception of the Legates, is it to be imagined that none but Earls, and great Lords accompanied them, and that there were no Knights or Gentlemen amongst them? And as for the words *Primates*, and *Optimates*, I think I have sufficiently proved that those do not only signify the Lords, or greater Nobility, but the lesser also: Nay, the Chief Citizens, and Magistrates of Cities and great Towns.

As for the next Authority concerning the *Plebs* that granted the Eighth Penny, it is much more evident that the Commons, as well as the Lords, must be comprehended under that Term. And that this is so, I need go no further than the Doctor's own Concession in the same Place a little farther, which you may read in these Words; *And that the Agreement for the Confirmation of the Charters here mentioned was made, and the Eighth Penny granted by the Earls and Barons, and perhaps the Knights of Shires; and that they were the Plebs that stood about the King in his Chamber, is clear from the Writ of Summons of Parliament for Two Knights in every County, Dated September the 15th immediately following, to come and receive the Confirmation of the Charters and his Letters, that the paying of this Eighth Penny should not prejudice the Commons for the future; and to do further what by his Son and his Counsel should be Ordained.* So that the Doctor himself is forced to confess, (tho' sparingly) that the Knights of Shires were likewise there, and comprehended under the Word *Plebs* at the Time of this Grant. The King held this Parliament at his Palace of *Westminster*, in some of the Halls or great Rooms, and the Commons might very well sit in the now Court of *Requests*, (then called the *Alba Aula*, or *White-Hall*) (where Parliaments have been frequently held) and from thence be sent for by the King into the *Painted-Chamber*, or now House of Lords, where the King then sat; and which might, in respect of the Hall from whence they came, be very well called, *Camera Regis*; for none can imagine his Presence-Chamber, or Bed-Chamber, could hold all that Company; and in that Room the King might make that Speech to them which this Author mentions; and then upon his promising to renew the Charters, followed the granting of the Eighth Penny *ab Incolis*, by the whole People, who immediately granted the said Subsidy. Now the Doctor grants in this Place, That the *Incole* here meant by the Historian were the *Incole Regni*, such *Inhabitants as used to pay Subsidies and Aids*; only the *Plebs* must here signify the Lay Nobility. Now, if the *Incole Regni* were such as used to pay Aids and Subsidies, who made this Concession, can any Man doubt, but that this Grant was made by their Representatives, or the Knights, Citizens and Burghesses? For if the Tax was general upon the whole Kingdom, (as it appears it was) can you imagine that the Citizens and Burghesses were not there present when this Tax was given, as well as the Knights of the Shires; since it was to be levied upon all alike? Nor is the Doctor's Objection of any Weight, *That because the King not long after Summoned another Parliament when he was beyond Sea, to meet his Son Prince Edward at Westminster; that therefore it was not probable, that if the Commons had been at the Agreement, and granting of the Eighth Penny in the King's Chamber, they would have been dismissed, and called again about the same Business in so short a Time, seeing the Confirmation of the Charter was dispatched in Six Days, when the Parliament met October the 6th.* For the Doctor is very much mistaken to imagine that this was the same Business they met about before, when the very Writ of Summons shews the contrary. For the Tax was given already, and therefore they could not meet about that; but the Truth was, the King went away in Haste into *Flanders*, without confirming the Charters. So that before the People would give any more Money, his Son, Prince Edward, was forced to confirm them, (as the Doctor himself confesses in the same Place,) after the Confirmation of these Charters, and that the Earls and Barons were satisfied. But as for the Doctor's wondrous Discovery of the false bad Translation of the old *French* Coronation Oath, I do so far indeed agree with him, that the Words *le Commune aura élu*, are not to be Translated, which the Commons, or Vulgar People, but the whole Community shall chuse; rendred here by the Word *Vulgus*, by the Old *Monkish* Translator: yet this can by no means signify only the Bishops, Abbots, Lords, and Tenants *in Capite*; (for who ever knew the Word *Vulgus* to signify the Superior Clergy and Nobility?) and so to exclude the whole Body of the People in general. But *Mat. Westminster* tells us, *Concessus est (viz. to Edward I.) Novenarius Denarius à Vulgo, à Clero vero Denus ad Scotorum Pertinacium reprimendam*, who had then invaded Northumberland, and harassed the other Northern Counties. Now pray read the Doctor's Comment upon these Words in his *Glossary*. Here *Vulgus* is the same with *Populus* and *Plebs*, when opposed to *Clerus*, or joined with it as a distinct Body of Men; and *Clerus & Populus*, *Clerus & Plebs*, *Clerus & Vulgus*, are the Clergy and Laity, in the Meaning of this Historian; whether the Earls and Barons alone, or the Temporal Earls and Barons with the Commons were understood by them; that is, the Commons represented in Parliament, and not the Multitude or Rabble. Which indeed

indeed is a worthy Discovery of the Doctor's. Nor do I know any body so mad as to render it in the Coronation Oath; but that this Word *Vulgus*, when put for the whole Laity of the Kingdom, is very ancient in that Oath, see the Old Coronation Oath in *Tottle's* Collection of old Statutes, who transcribed it out of some Ancient *Latin* Copy of that Oath, or else from that Clause in the Coronation Oath of King *Richard II.* which is still to be seen upon Record.

I beg your Pardon for speaking so long upon the true Signification of these Words *Clerus* and *Populus*, *Plebs* and *Vulgus*, since there was a Necessity for it, by reason of those false Glosses that the Doctor has with so much Artifice put upon them, still using them like Charms to bewitch and impose upon his unwary Readers; especially since a right Notion of these Words is absolutely necessary for the right understanding the true Sense and Meaning of our Ancient *English* Historians. So that after all this Pother the Doctor makes about the Signification of these Words *Populus*, *Plebs*, and *Vulgus*, as Synonymous as he grants them to be, they must all signify the whole Body of the People, as well the Commons as the Lords, represented in Parliament, by his own Confession; or else, I leave it to your self to consider, who of the Two is guilty of levelling Notions, your Doctor or Mr. P. since one does but assert with the general Consent of Ancient and Modern Writers, that the Words *Barones* and *Baronagium Anglie* did anciently take in more than the Lords, and Tenants *in Capite*. And the Doctor straight calls him a Man of Levelling Principles, and that jumbles the Commons together with the Lords. Whereas your Doctor can when he pleases, make the Words *Plebs* and *Vulgus* to signify the great Lords, and Tenants *in Capite*, contrary to the Subject Matter on which he discourses, and to their Genuine Signification, either in Ancient or Modern *Latin*.

M. Yet notwithstanding what you have now said, methinks you have not been yet so clear in your Explanation of the Word *Populus*; for admitting I should grant you, that there were in some sort Commons in Parliament as represented by the lesser Tenants *in Capite*, who were not Lords; yet does it not therefore follow that there must have been another Rank or Order of Persons beneath, or different from them, since (as I said it is, but now) 'tis only the Custom, and Law of each Country, that can determine what is the Community, or Representative Body of the People; so that there is no such certain Analogy between the *Clerus*, when taken for the Inferior Clergy, and the *Populus* when taken for the lesser Nobility, or Tenants *in Capite*. Since in *Scotland*, though their great Council or Parliament, might consist of the Abbots, and Inferior Clergy, as with us, who did not hold *in Capite*; yet you cannot deny, but that the Temporal Estate or Laity, (at least of late Ages) wholly consisted of the Earls, Barons, Lairds, or smaller Barons, together with the Burgesses of Royal Boroughs, all which held *in Capite*; and for ought as I can see from any clear Proofs you have brought to the contrary, did so from Times beyond all Memory: And so it might have been in *England* too, for ought as I know; for though you have taken a great deal of Pains to Answer the Doctor's and my Arguments against the Tenants *in Capite* being the Representatives of the whole Kingdom in Parliament, before the 49th of *Henry III.* and 18th of *Edward I.* and also to prove that the Words made use of in our Ancient Historians, Records, and Acts of Parliament, are of a more comprehensive Signification than to be confined to them alone: But you have not as yet proved that these Gentlemen who you suppose to have had Places in our great Councils, besides the Tenants *in Capite*, were Knights, Citizens, and Burgesses; or whether all the Lords of Manors, or great Freeholders in *England*, appeared there in Person for themselves, and their Under-Tenants; therefore I pray be a little more clear in this Point, and shew me some Authorities that the Knights of Shires, Citizens and Burgesses, have been always constituent Members of Parliament ever since the Conquest: For methinks you waver in this Matter, and sometimes you seem to assert the former, and sometimes the latter.

F. I confess it is not my Humour to be positive in any Thing that is in the least doubtful or obscure; and therefore as I will not maintain that Knights of Shires were always a constituent Part of Parliament before your Conquest, or presently after, tho' it is positively asserted by the Author of the *Modus tenendi Parliamentum*; since the Antiquity of that Piece is justly questioned by Mr. *Selden* and other Modern Antiquaries. So on the other Side, I shall not assert that they were not there from the beginning. But thus much I think I am able to prove, that they were Summoned to Parliament long before the 49th of *Henry III.* or 18th of *Ed-*

ward I. But as for the Cities and Boroughs, that they had their Representatives in Parliament, at or presently after your Conquest, I think I can prove from as undeniable Testimonies as can be expected: Since all the most Ancient Rolls and Records of great Councils and Parliaments are long since lost and destroyed.

Yet to shew you that we have some very ancient Authors that seem to mention not only the Citizens and Burgeſſes, but Knights of Shires to have been summoned before the Times you insist upon; and if it prove so, whether they were there from the very Time of the Conquest is not material; since if I confute your, and your Doctor's Opinion of the 49th of *Henry III.* and 18th of *Edward I.* I carry the Cause, and you may then invent if you can some other Epocha whereon to fix their first appearing at our great Councils.

I shall therefore give you another Quotation out of the same old *Monk Sulcardus*, which immediately follows the Conclusion of the Charter of King *William I.* to the Abbey of *Westminster*, but now cited: And it has been made use of not only by Mr. P. in his *Ancient Rights of the Commons*, &c. but by Sir *William Dugdale* himself, in his *Origines Juridicales*; as also by the Author of *Argumentum Antinormannicum*, to prove the Commons to have been summoned to a great Council, in the 9th Year of King *William I.* Anno Dom. 1075. The Words, as cited in Sir *William Dugdale*, are these, That after the King had Subscribed his Name to this Charter, with the Sign of the Croſs; adding many of the Bishops, Abbots, and Temporal Nobility, instead of *Cum multis aliis*, hath these Words, *Multis præterea illustrissimis virorum personis, & Regni Principibus diversi Ordinis omiſſis qui huic Confirmationi piſſimo affectu testes & fautores fuerunt: Hij autem illo tempore à Regia potestate diversis Provinciis; & urbibus ad universalem Synodum pro causis cujuscunque Christianæ Ecclesiæ audiendis, & tractandis ad præscriptum celeberrimum Canobium quod Westmonasterium dicitur Convocati.* Now I shall only observe from this Author, that Mr. *Selden* in his *Titles of Honour*, and Sir *Henry Spelman* in his *Glossary*,
Pag. 273.
Tit. Provincia.

M. I pray give me leave to examine this Quotation, because I confess it seems very specious at first Sight; but if it be thoroughly examined, will make nothing at all for you. And to this End, pray let us read the Doctor's Observations on this Passage at the end of his Answer to *Argumentum Antinormannicum*.
B. A. A. 301.

F. But you need not read from the beginning of that Paragraph, since I so far agree with the Doctor, as that by *Principes diversi Ordinis*, are not to be understood (as this Author renders them, whom the Doctor here writes against) the Chief or Principal Men of several Ranks or Conditions; but the Chief and Principal Men of both Orders, viz. of the Clergy and Laity; yet will it not therefore follow (as the Doctor here would have it) that these *Principes diversi Ordinis* were only Bishops, Abbots, and great dignified Clergymen only; and the *Proceres* and *Magnates*, the Earls, Barons, and Temporal Nobility alone; for though I grant he produces several Quotations out of *Florence of Worcester*, *Malmsbury* and *Eadmer*, to prove that *Principes Regni Ecclesiastici & Secularis Ordinis, Primates Regni utriusque Ordinis, &c.* were at these Councils; yet I have already proved that the Words *Principes* and *Primates* do not in their proper Signification signify none but Bishops, or dignified Clergymen, or the Temporal Nobility only; since these Words mean no more than Chief, Principal, or most considerable Men both of the Clergy and Laity, who had by reason of their Offices, Dignities or Estates, any Place in our General Councils at that Time; and which did certainly comprehend the Inferior Clergy also, though the Doctor has made bold to pass them by, without any Notice taken of them; and if they were then there, by the same Rule the lesser Nobility or Commons were also summoned from divers Provinces, Cities, and great Towns.

M. Well, but pray see here; does not the Doctor prove plain enough, that this Gentleman he writes against is mistaken in his Translation, by applying the Words *Provinciis, & Urbibus*, to Chief Laymen from divers Counties, Cities, and Boroughs; whereas the Doctor here proves that the Words mentioned in this Passage cannot here mean Laymen sent from County to Cities, but only the Bishops, whose Seats are here called *Urbes*, and which, as the Doctor shews us, were by a great Council held at London in the Year 1077, being the 11th of King *William*, translated from Villages to Cities, as were *Sherburn* in *Dorsetshire*, removed to *Sarum*; *Selfey* to *Chichester*, *Litchfield* to *Chester*, which was before this Council at *Westminster* cited by *Sulcardus*, which this Author places in the 14th of this King.
Ibid. p. 302.

And the Doctor here farther proves that these Words following, *pro causis cujuslibet Christiane Ecclesie*; that this Universal Synod being called for hearing and handling the Causes of every Christian Church; that these Words, every Christian Church, must certainly mean many Churches in *England*, which in Reason and Probability could not be meant of the small Parish Churches all the Nation over; and therefore must be understood of Cathedrals or Churches where Bishops Seats then were, or where they had been, or were to be removed.

F. Pray give me leave to answer this Comment of your Doctor's, before we proceed farther. In the first Place, suppose I grant him that by *Urbes* may here be meant such Cities as had Bishops Seats, yet does it not therefore follow that it shall signify no other Cities or Towns but Bishops Seats only; for tho' I grant in the Modern Acceptation of this Word *Urbs*, here in *England*, a City and a Bishop's Seat are one and the same; yet it is plain, that at first it was not so; for then there had been no need of the Law you mention, whereby it was ordained that Bishops Sees should be removed from Villages to Cities; nor were all of them so removed at the Time of the holding this Council, which was held Two Years before the said Decree: Nay, the Doctor shews us from this very Place here cited, that some of them still remained in *Villis & Vicis*, in Villages and small Towns. And tho' the Doctor here supposes (I know not on what Grounds) "That the Persons summoned by the King to this Synod, from Provinces and Cities, were such as were concerned, or able to advise the King in this Matter, of the Conveniency of the Places whither the Removals were to be made, as Deans, Archdeacons, and other dignified Persons, and Church-Officers, as well of the Clergy as Laity, &c.

In the next Place pray observe, that the Doctor owns that by these *Principes universi Ordines*, were meant the chief Clergymen and Nobility he there musters up; but passes by, or else did not consider the whole Context of these Words, *hij autem illo tempore diversis Provinciis & Urbibus ad universalem Synodum Convocati*; which must certainly refer to the *Principes Regni diversi Ordines*, to the chief and considerable Men both of the Clergy and Laity of the Kingdom, who were alike summoned from divers Countries and Cities, and great Towns, to this Synod. Now pray do you or your Doctor tell me (if you can) what Earls, Barons, or great Noblemen, were then summoned from Cities, or great Towns, as well as the Bishops and Deans of Cathedrals: Which if you cannot do, I see no Reason why we may not understand these *Principes Regni*, who were also summoned from the Countries and Cities, for the Representatives of the Commons of those Cities and Towns at that Time.

In the next Place, I think the Doctor is as much out in his Interpretation of the Word *pro causis cujuslibet Ecclesie*, for the Causes of every Cathedral Church; since it must certainly mean not only Cathedral Churches, but all other Churches, whether Parochial, or Conventual; for that it takes in the latter, appears by one great Cause of the summoning this Council, which was chiefly for the Confirmation of the Privileges of the Abbey of *Westminster*, which sure was no Cathedral Church, and yet must be some Church, or Ecclesiastical Corporation, or else this Synod could have had nothing to do with it: And I doubt not but this General Synod might, if it had pleased, have either made more Parish Churches, or united others where there were too many; and should it not then have been said to have met *pro causis cujuslibet Ecclesie*; for the Business of each Parish, as well as Cathedral Church? Lastly, The Doctor will have all these great Clergymen and Laymen only to meet at this Council, to advise the King about what farther Removals were to be made of Bishops Sees; as if thereupon he had had the sole Power of making Laws about them, without their Consent, or that of the Lay-Nobility, who tho' he will have to be always present in such Synods and Assemblies, yet does he not give them any Votes therein; whereas it appears by this Charter in *Sulcardus*, but now cited, that the Bishops, Abbots, Earls and Barons, whose Names are to it *consenserunt & signaverunt*; and it was *ab ipso Rege & supradictis Personis testificata, confirmata & auctorizata*; which if I understand *Latin*, signifies not only that they witnessed, but also assented to, authorized and confirmed it; which also appears more fully by the Conclusion of the Charter of King *Stephen's* but now cited; all which the Doctor passes by as silly as a Commentator does those Words in a Text of Scripture that make against his Sense; for this had quite ruined and destroyed his fine Notion of the great Councils of the Kingdoms then wholly

consisting of a few Bishops, Abbots, dignified Clergymen, and great Noblemen, who had nothing else to do there but to look on, whilst the King alone made the Law.

To conclude; to shew you that this Assembly was not only an Ecclesiastical Synod, but Civil Council also, or Parliament as we now call it, I will give you Two good Testimonies for it, that we are not alone in this Opinion: The first is from Mr. Somner's Glossary, *Parliamentum Synodus magna vocatur*; and to confirm this there is written in an old Hand in the Margin of this Manuscript of *Sulcardus* over against the Passage now cited, this Note; *Nota hic omnes convocari à Rege sua auctoritate ad causas Religionis tractandas tam nobiles de Clero, quàm Principes Regni cum aliis inferioris gradus quorum conventio videtur esse Parliamentum.*

M. Yet I suppose you cannot deny but that the Doctor has plainly proved from several Quotations from *Gervas of Canterbury*, *Richard of Hagulstad*, and the Continuator of *Florence*, that the Word *Provincia* in this Place signifies a Bishop's Diocese; and therefore that the *Principes Regni* who were summoned out of these Provinces or Dioceses, were only the Bishops, Abbots, and other great Clergymen.

Ibid. f. 322.

F. I will not deny but that this Word *Provincia* does sometimes in our ancient Authors signify in an Ecclesiastical Sense the Diocese of a Bishop, as those Authors (the Doctor has here cited) shew us; yet that it must be taken in a more unlimited Signification in this Place, is also as certain; since besides that this Word *Provincia* does most commonly signify a Shire or County, (as I have already shewn) the very Context sufficiently proves it; since *Sulcardus* says expressly, that the chief Persons of both Orders were summoned from the Counties, or Provinces, as I already said; which when it refers to Lay-Men as well as to the Clergy, I hope you will not affirm that it can signify Dioceses only; but that besides the Bishops and Abbots, there were a great many more Persons present at this Council, both of the Clergy and Laity, the Doctor himself confesses. Let us therefore consult the Authors themselves which Dr. Brady has cited for the Sense of this Word *Provincia*, and let us see how fairly he has dealt with them. Now pray Sir observe, it is true, the same Words are almost repeated *verbatim* in every one of these Historians, *R. Hagulstad*, *Gervas of Canterbury*, *Ibid.* and the Continuator of *Florence*, who all speak of a General Synod held at *Westminster Anno Dom 1138.* being the Third of King *Stephen*, in these Words, *Decima tertia die Decembris celebrata est Synodus apud Westminster. cui presuit Albericus Hostiensis Episcopus Domini Papæ Legatus, cum Episcopis diversarum Provinciarum numero XVII. Abbatibus fere XXX.* Here the Dr. concludes with an *&c.* Now see what lies hid under this *&c.*; in *R. of Hagulstad*, and the Continuator of *Florence*, it follows thus, *Cum Cleri & Populi multitudine numerosa*; in *Gervase of Canterbury* almost in the same Words, *Cum innumera Cleri & Populi multitudine.* Now pray tell me ingenuously what could be the Doctor's Meaning (who pretends to be so exact in all his Quotations) to leave out this so material a Passage in every one of these Authors, with this *&c.* unless it were that he was afraid his Readers should take notice how numerous this Council was, both of the Clergy and People; which if he had done, it would have quite overthrown and destroyed his Notion of Tenants *in Capite*, and let the World have known that this Council consisted of a far greater Number both of the Clergy and Laity, than 17 Bishops, and 30 Abbots. Now had such a Thing been done by Mr. Petyt, it would have been branded by the Dr. with the hard Terms of taking away, or leaving uncited such Words and Matters as he thought would either advance or destroy his Assertions, as he (how justly, I leave it to you to judge) accuses Mr. P. in his "Title to his first Edition of his Answer to him". But

Ibid.

Turpe est Doctori, cum culpa redarguit ipsum.

M. I cannot believe the Dr. had any sinister Meaning in leaving out this Passage, but did it either because (as I said but now) he supposed these Expressions as only Hyperbolical Phrases, by which these Monkish Writers used to express all the Ecclesiastical or Lay-members of those Councils; or else because he did not think it worth while, since he might not look upon this innumerable Company of Clergy and People here mentioned to have had any Share or Voice in this great Council, but only to have come thither as idle Spectators, as the Dr. shews us the Po-

B. A. A. p. 30.

F. 54.

pulus did at the making of *Lanfranc* Archbishop of *Canterbury*; nor yet that they, or the Bishops and Noblemen chose him, but only all applauded the King's Choice. But that the Dr. was not afraid to take notice of the great Multitude of People that in those hospitable Days were wont to flock to such Assemblies, pray see what he says in his Series of *English* Great Councils, or Parliaments, at the End of his Introduction to *English* History; where speaking of the Election of Archbishop *Anselm*, he recites this Passage out of an Epistle in *Eadmerus*, *Huic Electioni affuerunt Episcopi, Abbates & Principes Regni, & ingens Populi multitudo*. The ordinary People (says the Dr.) came to shout and make a Noise at such Meetings, and only for good Victuals and Drink.

I Very well: I think I shall easily answer your and the Dr's learned Observations. First, as for the Monkish Hyperbolical Phrases of *innumera* or *numerosa Cleri, & Populi multitudo*: I confess, you might suppose there was somewhat in them, if they had been peculiar only to one or two of them; but when all these Writers do with one Consent agree, in almost the same Words, to express all the Members of such Councils; I cannot see how they could have writ thus, unless they intended to be understood literally, that there were great Numbers both of Clergymen and Laicks, who appeared as Members of those Assemblies, far more than the Dr's Tenants *in Capite*. And that they had also Votes therein, appears by that Passage in the Conclusion of King *Stephen's* Charter, which I quoted but now out of *Sulcardus*; when speaking of this very Council in the Third of King *Stephen*, which we last mentioned, that not only the *Comites, & Barones Regni*, but the *innumera multitudo Cleri & Populi*, were not only present, but *Religioso favore voluntatem, & Assensum Autoritati nostre pagine, & Privilegio præbuerunt*, i. e. yielded their good Wills and Consents to this Charter of Privileges to the Abbey of *Westminster*. And to shew you farther that this infinite Multitude of Clergymen and Laics were also part of this Council, pray remember the Passage I but now cited out of *Florence*, of the Council held at *London*, *cum innumera Cleri & Populi multitudine*, who all alike gave their Consents to the Constitutions, by *placet, placet, placet*; and consider what the same *Sulcardus* has said in the next Council of the Fourth of King *Stephen*; when after *Concilio adunato Cleri & Populi*, and a Recital of the Bishops, he concludes with *Monachorum & Clericorum Plebisque infinite multitudinis*, as all alike Members of it.

Now I shall leave it to your self, or any sober unprejudiced Person, to consider, whether it is likely that so Grave and August a Thing as the Royal Charter of a Prince should take notice of the frothy Consent and Applause of the meer Rabble or Mob, (whether of the Clergy or Laity); or so judicious a Writer as this Author, and the rest of the Historians (now cited) should have nothing else to do, but to record to Posterity for a very remarkable Transaction, That a great Multitude of the ordinary or vulgar Sort of People came to these Assemblies only to shout and make a noise, for good Victuals and Drink: And therefore the Dr. and you, I hope, will pardon me if I still keep my former Opinion, that both the Archbishops *Lanfranc* and *Anselm*, were not only named or proposed by King *William* the First and Second, in the Common or General Council of the Kingdom, but were also therein Elected or Chosen by the *Clerus* and *Populus*, according to the Manner of that Age, and the literal Meaning of those Ancient Authors, whose Words the Dr. either leaves out, or strives to wrest to quite another Sense. Nor are his Objections against the Election of *Lanfranc* at all considerable. For as to the first Objection against the literal Sense of the old Author, printed at the End of *Trotter's* Gavelkind, "That he could not be elected *consensu totius Populi Anglie*, because, who can believe that all the People of *England*, or the Hundredth Part of them, ever knew or understood of *Lanfranc's* being made Archbishop?" Now pray let me ask you this Question; supposing this Election had been made in a General Synod of the Clergy alone, and the Words had been instead of *totius Populi, totius Cleri Anglie*, would it not have been meer cavilling, to ask how all the Clergy of *England* could leave their Livings, and come up to give their Consents at this Election, or that the Hundredth Part of them ever knew of it? Since every Body is sensible those Words are not to be understood in a literal, but legal Sense; that is, the whole Clergy are said to give their Consents to a Thing, when they do it by their lawful Representatives, the Bishops and Procurators of the Inferior Clergy? And why may not the whole People of *England* be as well said to give their Consents to this Election by their lawful Representatives

E.A.A. p. 300.

tives at that Time? But that we are not singular in this Opinion, pray see what Archbithop Parker says in his *Antiquitates Britannicæ*, of this Election of Lanfranc's, *Celeberrima est autem hujus, præ cæteris Electio, &c. Electus est enim à Majoribus Cantuariensis Ecclesiæ, tum accessit Procerum, atque Prasulum, totiusque quasi Populi consensus in Aula Regis, quod sanè est instar Senatus seu Parliamenti Anglicani.* As for the next Objection against this Election of Lanfranc's, it is yet weaker than the former, because the Dr. has answered this Question himself, How the *English* Saxon Bishops, Barons, and the whole People should chuse a Stranger, a Person they had never known, and postpone all their deserving Countrymen? Now pray read a very good Solution to this Difficulty (if he may be believed) in his Answer to Mr. P. wherein he tells us, that King William had taken away from the *English* their Estates, and gave them to his *Normans*; and that this he did from his very first coming in; and then reckons up the Earldoms he gave to his *Norman* Followers. Now if the *English* had then no Estates, they could sure have no Places or Votes in that great Council when Lanfranc was chosen. But if to solve this you will say as the Dr. does in his Answer to *Antinormannicum*, that this Council was held about the Fourth Year of the Conqueror, some Years before he had made an absolute Conquest, and that the *English* Bishops, and Barons, and Freemen had still some Estates left, and therefore might then make the major Part of this great Council, when Lanfranc was made Bishop, who would never have elected him had it been left to their Choice: Pray tell me if the bare Fear of refusing be a sufficient Objection that he was not elected, whether or no it will not be as strong an Objection against his being elected by the Senior Monks of the Church of *Canterbury*, as *Gervase* expressly tells us he was, "Because (says the Dr.) they did it by Order and Direction from K. William; and their Proceeding being no other than it is now by the Chapters of other Churches upon the *Conge d'Eslire*, they could not refuse him". And now supposing his Power to have been as great in the Common Council of the Kingdom, as in the Chapter of *Canterbury*, why may we not say almost in the same Words, They could not, they durst not refuse him (who was already elected by the Prior and Chapter of *Canterbury*) for fear of losing their Estates. But if an Election that cannot be refused, is none at all, the Dr. may do well to consider whether there was then, or is now, any Canonical Elections of Bishops in *England* at this Day.

P. 14, 15.

P. 300.

Gervaf. Drob. in Aët. Povet. Cant. Col. 1653. Glossary. p. 36, 37.

M. I shall not farther dispute this Matter at this Time; therefore pray go on to the rest of your Authorities out of our *English* Historians, proving that any Knights, Citizens and Burgeses appeared in Parliament before the Times we allow them to have been there.

F. Tho' I think I have sufficiently proved at our last Meeting, from the Charters of King John, and Henry III. as also from the Words *Communitas* and *le Commune*, that the Common Council of the Kingdom consisted of many more Members than your Tenants *in Capite*; yet to let you see that the Historians and Annalists of those Times did comprehend all the several Orders under the general Titles of *Clerus* and *Populus*, or *Magnates* and *Proceres*, you may see in the Chronicles of Thomas Wikes, Anno Dom. 1237. Where it is only said in general, that the *Clerus* and *Populus Regni* did in that Year (being the Ninth of Henry III.) grant the King a 30th of all their Moveables for the Confirmation of *Magna Charta*; and which is more remarkable, the Parliament which was held in the Year 1264. being 49th of this King, (and in which you grant the Commons were present) is only thus briefly mentioned by this Author, in an Historical way, *transacto siquidem vicesimo die Nativitatis Dominicæ facta est London. per Comitum (scil. Leycestriæ) Convocatio non minima Procerum Anglicorum, &c.* Where in the Annals of Waverly in this Year, it is only said, *Factum est Parliamentum magnum Londoniæ, &c.* Now pray observe, that either the Commons are mentioned by Wikes under the Name of *Proceres*, or not at all; and that under the Word *Parliamentum* the Commons were then comprehended, appears by the Agreement between the King and the Barons there extant, which is said to be made, *de unanimi assensu, & voluntate nostra (scil. Regis) Edwardi Filij nostri Prelatorum, Comitum, & Baronum, & Communitatis dicti Regni nostri*: Now it must be granted, since it appears by the Writs of Summons of 49th Henry III. that the Commons were there, and consequently must be comprehended under this Phrase of *Communitatis Regni*; and if this had been the first Time they had been summoned, 'tis strange none of these Authors should

Annal. Waverly, p. 217.

take any notice of so remarkable an Alteration and Change of the *constituent* Parts of our *English* Parliaments.

P. 82.

But that the Knights, Citizens and Burgeſſes were alſo ſummoned in the next Year, in a Parliament of the 50th of this King, you may ſee in the ſaid *Wikes's* Chronicle, *Anno Dom. 1265.* where he ſets down all the *constituent* Eſtates of Parliament, which were ſummoned to meet at *Weſtminſter*, at the Tranſlation of St. *Edward's* Reliques, in theſe Words, *Convocatis univerſis Angliæ Prælatiſ & Magnatibus nec non cunſtarum Regni ſui Civitatum pariter, & Burgorum potentioribus ut Tranſlationis Solemnia Celebrius illuſtrarent*; where the Knights of Shires are comprehended under *Magnates*, and the Citizens and Burgeſſes are here ſtiled *Potentiores Civitatum & Burgorum*. And that this was not only for a meer Ceremony, but for Parliament Buſineſs alſo, ſee the next Page, where he tells us, *Celebrata tandem tantæ tranſlationis ſolemnitate ceperunt Nobiles* (i. e. all the Eſtates above-mentioned) *ut aſſolent, Parliamentationis genere de Regis & Regni negotiis pertractare, &c.* And in which Parliament the King ſo far prevailed as to obtain a 20th Part of all the moveable Goods of the Laity. And yet the Continuator of *Mar. Paris* in the Affairs of this Year takes no Notice of this Parliament, but only ſays in general, that St. *Edward's* Body was this Year tranſlated into its new Shrine. And the Annals of *Waverly* under this Year make mention of this Parliament in general Terms thus, *Facta Convocatione Episcoporum, Comitum, Baronum, Abbatum, Priorum, & multorum aliorum*. So uncertain a Thing it is wholly to depend upon the general Expreſſions of Monkish Writers, without comparing them and the Records together, and conſidering the Subject Matter about which they treat. Nor can we ſuppoſe, that the *constituent* Parts of our Parliament were chopt and changed as often as they did their Phraſes and ways of expreſſing the Parts of them. For they not foreſeeing the Differences that might ariſe about theſe Matters, had no Reaſon particularly to recite the *Conſtituent* Members or Eſtates of Parliament, as often as they had occaſion to mention them, it being very well known who they were at that Time. But to prove further, that it was not likely there was any Alteration in the *Conſtituent* Parts of the Parliament, from what it was in the 49th, may appear by this Writ ſtill extant among the Patent Rolls of the 54th of this King; where it is expreſſly recited, That it not ſeeming ſafe to the *Prælatiſ, Magnatibus, & Communitati Regni noſtri*, that Himſelf and his Son Prince *Edward* ſhould be both out of the Kingdom at once in the Holy Land; and that therefore he gives the whole Subſidy of a 20th, granted him by the whole Kingdom, to his ſaid Son. And that it continued ſo in the beginning of *Edward I.* Reign, appears by a Proteſtation in the 4th of this King; as it is found in the Patent Rolls, wherein he recites a 15th to have been granted him of all Moveables, by the *Comites, Barones, ac alij Magnates, & Communitas Regni noſtri*. So that unleſs the Senſe of theſe Words *Communitas Regni* muſt alter every Year, there is no Reaſon for us to believe any Change to have been in the *Conſtituent* Parts of Parliament ſince the 49th of *Henry III.* This I think may be ſufficient to ſhew you that before the Time you mention, not only the Knights of Shires, but the Citizens and Burgeſſes did appear in Parliament both before your 49th of *Henry III.* and 18th of *Edward I.*

Rot. Pat. 54.
H. 3. m. 7.

M. Perhaps indeed ſince that the Commons might be comprehended under the general Words *Magnates & Proceres* by *Wikes's* Chronicle in the 49th of *Henry III.* or elſe not be mentioned at all, which I rather incline to believe; that the other Paſſages out of the ſame Author concerning the Citizens and Burgeſſes being ſummoned either to a great Council or Parliament in the Reign of *Henry III.* is more than I before ever took notice of. Yet this Author does not tell us, whether it was to the one or the other, nor how many of them were there; whether one only, or more, for each City and Borough-Town; or whether they were elected by the People, or nominated by the King to appear there: But as for the Words *Communitas Regni* mentioned in the Agreement of the 49th of *Henry III.* tho' it might ſignify the Body of the Commons in that Record, yet if they were not again ſummoned to Parliament, till the 18th of *Edward I.* it ſignified only the Body of the leſſer Tenants *in Capite*, till after the 18th of that King.

F. I am ſorry to ſee Prepoſſeſſion and Prejudice has ſo much over-run you as to hinder you from cloſing with the Truth; for pray tell me, if this Author laſt mentioned could in the 49th of *Henry III.* (when the Commons were ſummoned without Diſpute) comprehend all the Eſtates of that Parliament under the general Words

Words of *Proceres* and *Magnates*; and the Knights of Shires are understood by the same Word in the next Passage cited out of the same Writer; why may not others do so too in other Parliaments? As for your next Exception, it is a very small Cavi; for it appears that this Summons of the Citizens and Burgeses at the Translation of King *Edward's* Relicks, was to a Parliament, by the Words that follow, *Nobiles ut assolent Parliamentationis genere de Regis, & Regni negotiis pertractare*: And why these Citizens and Burgeses should not be as well elected by their respective Cities and Boroughs this Year as well as in the last, as it appears they were by that Writ to the Cinque Ports, which the Dr. and Mr. Pryn has given us; I desire you would give me any satisfactory Argument to the contrary. As for your Objection against the Words *Communitas Regni* being to be understood for the Body of the Commons in 54th of *Henry III.* it is altogether as unreasonable, since this is to make the *Constituent* Parts of the Parliament alter, not only when Writers shift their Phrases, but when they do not; and that without any other Reason, but because the Writ of Summons and Parliament Rolls of those Times are all perished. And to deny the Commons were there, only for that Reason, is altogether as unjust as for any Court of Justice to turn a Man out of the actual and long Possession of an Estate, merely because his Writings and Evidences by the Carelessness and Roguery of his Servants have happen'd a great many of them to be lost or burnt.

*B. A. P. p. 147.
P. in's Parliam-
ment Regist. r*

But fully to convince you (if possible) that Dr. *Brady's* Opinion of the Commons not being again summoned from the 49th of *Henry III.* till the 18th of *Edward I.* is a meer Fancy of his own, and contrary to the express Authorities both of Historians and Records; and to come to plainer Proofs; pray in the first Place take notice, that it appears by a Writ of the 11th of King *Edward I.* to the Archbishop of *Canterbury*, acquainting him with the Rebellion of *Lewellyn* Prince of *Wales*, that he had *de Concilio Prælatorum, Procerum & Magnatum Regni, nec non totius Communitatis ejusdem*, resolved (God willing) to put an end to this *Welsh* Rebellion: So that this War seems to have been resolved upon at the Parliament held the Year before, and now mentioned in this Record; a War which that valiant and fortunate Prince effectually concluded by the total Subduing of *Wales*, and the killing of *Lewellyn*, whose Head was cut off and sent to *London*; the Particulars of which War *Knighton*, as well as other Historians relate at large; and also that presently after, *David*, the Brother of this *Lewellyn*, the Cause of all these Mischiefs, was (as this Author shews us) in *Magno Parlamento* at *Shrewsbury*, condemned, and afterwards hang'd, drawn and quarter'd.

*Rot. Wallie. m.
4. n. 2. dorso.*

Walsingham is more short in the Relation of this Parliament; only says, that in the 11th of *Edward I.* *Habitu est Parliamentum* at *Shrewsbury*, in which this *David* was condemned and executed as before. But *Thomas Wikes*, who lived at this very Time, in his Chronicle but now cited, will better instruct us than either *Walsingham* or *Knighton*; and his Account of this Parliament is as follows.

Col. 2463.

*Walsing. Hist.
Ang. fol. 51.
Chron. Thom.
Wikes, f. 111.*

Anno 1289. Circa Festum Sti. Michaelis Rex convocari fecit apud Salopesberiam Majores Regni sui & Sapientiores tam de Civibus, quam de Magnatibus & fecit illic adduci David, qui apud Rothelan fuerat captivatus ut super exigentiam Delicti sui corpore subiret Judicium, &c. And then relates at large the Manner of his Execution. From which Passage we may observe, that this Author makes it plain who were the *Communitas Regni* mentioned in the Record of the 11th of this King, and who constituted this great Parliament at *Shrewsbury*, viz. *Majores & Magnates Regni*, which last, as I have often proved, takes in the Knights of Shires, and the wisest of the Citizens.

M. But yet this Author says no more, but that the *Majores Regni & Sapientiores tam de Civibus, quam de Magnatibus*, were called to this Parliament where-in *Lewellyn* was condemned: Now it doth not appear that these *Cives* were elected, or that there were any Burgeses chosen for the Boroughs, or that there were any Knights chosen by the Counties; there were indeed *Magnates* called to this Parliament, but they might be all Tenants in *Capite*.

F. Well then, since you will not be satisfied without direct and evident Proof, such as neither your self nor Dr. *B.* can deny; pray take this which Mr. *Petyr* has not long since communicated to me; and which he has lately discovered in *Rotulo Wallie*, in a By-Roll not taken notice of by any body as I know of before. It is a formal Writ of 11th of *Edward I.* for summoning the Temporal Lords to be with that King at a Colloquy, (or Parliament) *apud Salop in Crasino*

*Rot. Wallie, 15
E. 1. m. 2. dor.*

Id. Ibid.

fino *Sii.* Michaelis; and there is in the same Roll a second Writ directed to several Cities and Boroughs for electing Two Citizens, and two Burgeses to this Parliament with a void Space to insert more Names. And also a Third Writ is there directed to the Sheriff of every County in *England* to cause to be chosen Two Knights, *pro Communitate ejusdem Comitatus*. And lastly, there is a Fourth Writ directed to the Justices and other of the King's learned Council, with the same Preambles to each of them, all being commanded to appear at the same Time and Place. Now what can Dr. *Brady* say to this? That he was so long Keeper of these Records, and sure ought to have perused them, (as he did many others of the same Reign,) yet has either wilfully or carelessly passed by this so memorable a Record. And so I hope this will convince you for the future of the Danger of being over-positive in an Opinion, because it could not presently be confuted; and let you see that it is not at all improbable, but that the like Writs of Summons would appear as well before the 49th of *Henry III.* as in the rest of the Years of his own and his Son's Reign, had not those Records been lost and destroyed: Which considered, we have Reason to thank God for those that the Iniquity of the Times have yet left us.

M. I must confess you have told me more than ever I yet thought could be produced against the Dr.'s Opinion; and I should be thoroughly convinced, could you shew me any Writs of Expences for the Knights, Citizens, and Burgeses, who appeared at this Parliament.

*Ind. 4th Part of
Parliament Re-
gister, p. 12.*

F. I hope you will not aver against an express Record, tho' the Writs of Expences for that Year are lost (being never entred upon the Roll) by the Omision of the Clerks, who as Mr. *Pryn* acknowledges, oftentimes neglected the Entries of Writs of Summons themselves, as well as of Expences. But if this were any material Objection, then there should have been no Commons summoned to any Parliament from the 49th of *Henry III.* to the 28th of *Edward I.*; when the first Writs of Expences (except those of the 49th of *Henry III.*) do first appear upon the Rolls; and so you must then go from the Doctor's new Notion of the Commons being again summoned in the 18th of this King. But to shew you that these Expences for the Knights, Citizens and Burgeses could be no new Things, Pray peruse the Clause in this Second Writ *de expensis Militum & Burgensium*, of the 28th of *Edward I.* we have upon the Rolls: The Writ is to the Sheriff of *Somersetshire* to pay to the Knights of that County, *Venientibus ibidem nobiscum de diversis negotiis nos, & Populum Regni nostri specialiter tangentibus rationabiles expensas suas in veniendo ad nos ibidem, morando, & inde ad propria redeando* (and now observe what follows) *prout alias in Casu Consimili fieri consuevit*. Now pray tell me, how this last Clause could ever be true, if the Knights of Shires, Citizens and Burgeses, had never been summoned to Parliament since the 49th of *Henry III.* which was but 32 Years; or the 18th of this King, but 10 Years before this Writ was published all over the Kingdom.

*Rot. Claus. 28.
r. 1. m. 12.
dor. a.*

M. I confess what you now say, seems to carry some Weight with it; but yet in my Opinion falls far short of a Prescription; since a Thing might be said to be done as in like Cases was accustomed, tho' it had never been practised above 20 or 30 Times.

P. 106.

F. I see neither you nor your Dr. by Reason of your different Employments, had ever any true Knowledge of the Nature of Tenures and Prescription according to the Laws of *England*; which he is not to be blamed for, had he not taken upon him to be so great a Master in both: Therefore to set you right for the future; you must know, the Knights, Citizens and Burgeses have ever claimed being summoned to all Parliaments by Prescription, as I shall prove by and by; but as for that Part of it called Custom, my Lord *Coke* tells us in his Notes upon *Littleton*, "That in every Custom there be Two Essential Parts, Time and Usage, "Time out of Mind, and continual Peaceable Usage without lawful Interruption". Now the Commons have in all Times beyond the Memory of Man, challenged to have enjoyed both these essential Parts of Common Law or general Custom. So that these Words, *Prout Casu Consimili consuevit*, must be by Implication of Law extended beyond the Times of *Henry III.* and *Edward I.*

And for Proof of this, I shall shew you what Claims the Commons have made to this Usage from Time immemorial. Therefore I shall begin with Mr. *P.*'s first Argument in his Rights of the Commons asserted, where the Burgeses of *St. Albans* in their Petition to King *Edward II.* in Parliament, *Anno Regni 8*, set forth, that they

Sicut

Sicut ceteri Burghenses Regni ad Parliamentum Regis (when it should happen to be summoned) *Per duos comburgenses suos venire debeant, prout totis retroactis temporibus venire consueverunt, tam tempore Domini Edwardi, nuper Regis Angliæ patris Regis, & Progenitorum suorum,* as in the Time of Edward II. *Semper ante instans Parliamentum, &c.*; and farther declare that the Names of such Burghesses coming to Parliament were always enrolled in the Rolls of the Chancery; notwithstanding all which, the Sheriff of Hertford, at the Procuration, and in Favour of the Abbot of St. Albans and his Council, refused *Burgenses prædictos præmunire seu nomina eorum retournare prout ad ipsum pertinuit, &c.* and therefore they pray Remedy. The King and Council's Answer whereunto was thus, *Scrutentur Rotuli, &c. de Cancellaria si temporibus Progenitorum Regis Burgensis prædicti solebant Venire vel non? & tunc fiat eis super hoc Justitia vocatis evocandis si necesse fuerit.* Where by the Words *totis retroactis temporibus, &c.* must be understood that they and their Predecessors were always accustomed to send two Burghesses to Parliament in all former Ages, not only in the Time of Edward I. but his Progenitors; therefore in King John's Time, his Grandfather, at least, and so long before the 49th of Hen. III.

M. I confess the Gentlemen of your Party make a great deal of Noise with this Quotation, but if it be strictly lookt into, I believe it will prove of no such great Consequence as you would make it. For Mr. P. hath concealed the main Cause of these Burghesses pretending a Right of sending Members to Parliaments; and therefore 'twill not be amiss to give you the rest of it at large.

Ad Petitionem Burgensium ville de Sancto Albano suggerentium Regi quod licet ipsi tenent villam prædictam de Rege in Capite & ipsi sicut ceteri Burghenses Regni ad Parliamentum Regis cum ea summoniri contigerit per duos Comburgenses suos venire debeant prout totis retroactis temporibus venire consueverunt pro omnibus serviciis Regi faciendis, &c. By which Words, as the Dr. very well shews us, it is evident, that the Burghesses of St. Albans claim'd not, nor prescribed to come to Parliaments as meerly from a Borough, but as from a Town that held in chief of the King; and this Service was incident to their Tenure, and was such as the King's Progenitors had accepted in lieu of all Services due by reason thereof.

And farther, the Answer to this Petition is remarkable, which amounts to no more than this, That if it did appear by the Rolls of Chancery, that the Burghesses of St. Albans were wont to come to Parliaments in the Time of the King's Progenitors, then such as have been called (*i. e.* to Parliament) should be called when there was necessity for it. Hence 'tis clear the King and his Council were equally Judges when it was necessary to call them, and for them to come; as they were of their Rights and Pretences to come.

F. I very much wonder a Gentleman of your Understanding should be so much imposed upon by such weak Inferences: For in the first Place it is a great Mistake in Matter of Fact, that these Burghesses of St. Albans claimed to come to Parliament no otherwise but as Tenants *in Capite*; for tho' the said Petition recites, that they held the said Town of the King *in Capite*, yet they do not likewise say, that they claim'd to appear there only by that Tenure, for then they should have recited that they *sicut ceteri Burghenses Tenentes in Capite*, and not *sicut ceteri Burghenses Regni ad Parliamentum Regis venire debeant*. And tho' it is true they set forth, that they appeared there for all Services, yet do they not say, that their Tenure *in Capite* was the only Cause of their Appearance in Parliament; since divers Towns and Boroughs of the Kingdom, which held not *in Capite* at all, had the like Privileges before; of which I can give you divers Instances, which I shall read to you out of this Note, which a Learned Friend of mine, since deceased, hath taken out of the Rolls in the Tower, tho' when he sent it me, he through Haste or Inadvertency, hath forgot to set down the number of the Roll to most of such Boroughs who never held *in Capite*, and yet have always sent Burghesses to Parliament by Prescription; as first, The Borough of Arundel, which always held of the Earls, and never of the King, being granted by Henry I. to Hugh Montgomery Earl of Arundel. Secondly, The City of Bath appears to hold of the Bishop of Bath and Wells. Thirdly, The City of Wells it self, which always held of the Bishop, and never of the King, and is therefore called *Villa Episcopi* in all publick Writings belonging to that Church, and was made a Free Borough in the Third of King John. Fourthly, Beverly was made a free Borough by Thurston Archbishop of York, which was confirmed by King Henry III. Fifthly, Bodmin, which always held of the Earls of Cornwall. Sixthly, Bridgewater; for

King

Chart. Antiq. King John granted it to William Brewer, *Quod Brugwater, sit liber Burgus.*
2. Joh. M. 13. Seventhly, Coventry, which was always held of the Earls of Chester, and pleaded in the Reign of Edward I. to have never been taxed with the King's Demefines, but with the Body of the County. Eighthly, *Bishops-Linne*, for King John granted to John Bishop of Norwich, *Quod Burgus de Lenna sit Liber Burgus in perpetuum*: All which by the Writs we have left us, sent Burgeſſes to Parliament as early as any that held *in Capite*. Theſe I give you only for a Taſte; but I doubt not, but, if I had Time, I could give you Three Times as many, eſpecially in Cornwall, where the Boroughs did almoſt all hold of the Earl of Cornwall, and not of the King. But beſides the Doctor's Error in ſuppoſing that no ancient Cities or Boroughs had any Right of ſending Members to Parliament, but only as they held of the King *in Capite*, his Miſtake is yet much more groſs in his conſtruing thoſe remarkable Words in the King's Answer to the Burgeſſes of St. Albans, *Et tunc fiat eis ſuper hoc Juſtitia, evocatis evocandis ſi neceſſe fuerit*, thus, "And then let them have Juſtice in this Matter; and ſuch as have been called, may be called, if there be Neceſſity. Upon which Words you have alſo from the Doctor put this pleaſant Gloſs: "Hence 'tis clear the King and his Council were equally Judges when it was neceſſary to call them, and for them to come; as they were of their Rights and Pretences to come. But I muſt needs tell you, I think nothing can be more abſurd, and contrary to the genuine Senſe of this Record, than the Doctor's Conſtruction, who will needs have the Words *evocatis evocandis*, only to mean a Calling, or Summoning to Parliament, which is quite contrary to the true Senſe of the King's Answer to this Petition; for if that had been his Meaning, that thoſe only ſhould be Summoned to Parliament whom the King pleaſed to call, to what Purpoſe were theſe Words, *ſcrutentur Rotuli, &c. de Cancell. ſi temporibus Progenitorum Regis Burgenſes prædicti ſolebant venire vel non?* For if their coming to Parliament had been a Matter of meer Grace and Favour, and not of Right, and ſo wholly left in the King's Breſt whether they ſhould come or not; it was in vain for him to command the Rolls of Chancery to be ſearched, whether any Burgeſſes uſ'd to come to Parliament or not, in the Times of his Progenitors. Or if it had not been a Matter of Right, why ſhould it be here ſaid, that upon ſearch of the Rolls, *Tunc fiat Juſtitia*, Let Juſtice be done, if there never was ſuch a Right of Preſcription by which they claimed? But I much wonder that the Doctor (ſo great a Critick in Records) ſhould ever conſtrue them *evocatis evocandis*, a ſummoning or calling to Parliament; and I deſire you would ſhew me in what Parliament Roll, or Ancient Record you can find *evocare ad Parliamentum*, to ſummon to Parliament: But I more admire that you, who are a profeſſ'd Civilian, ſhould no better underſtand the Senſe of your own Terms; whereas if you would have but conſulted any Civil Law Dictionary, you might have found *evocare Teſtes* always ſignifies to ſummon Witneſſes; and I can ſhew you by Twenty Precedents both from our Common Law Records, as well as your Canon Law Forms, that *evocatis evocandis*, does always ſignify the Summoning ſuch Witneſſes as are to be ſummon'd in a Cauſe; and in this Senſe it is to be underſtood in this Record, that not only the Rolls ſhould be ſearch'd, but alſo Witneſſes ſummon'd to prove their Claim, if any Diſpute or Doubt ſhould ariſe about the Matter of Faſt.

M. I ſhall no longer contend with you about the genuine Senſe of theſe laſt Words, ſince perhaps you may be in the right; but yet for all that, it does not appear, that the King and his Council did by this Answer allow this Petition of the Town of St. Albans to be true, That they had ſent Burgeſſes to Parliament in the Time of his Predeceſſors; much leſs that any other City or Borough in England were then allowed ſuch a Right by Preſcription.

F. I grant indeed that this Petition doth not abſolutely allow the Matter of Faſt (as it concerns the Diſpute between them and the Abbot) to be true, as it is there ſet forth; neither yet does it condemn it for falſe. But whether it were true, or falſe, it matters not; for both the Petition and the Answer do ſufficiently prove the Point for which we make uſe of it; (*viz.*) that it was then received for a general Cuſtom, or Law, Time out of Mind, That the Cities and Boroughs had ſent Members to Parliament according as in the Petition is ſet forth; otherwiſe it can ſcarce be ſuppoſed (much leſs believed) that the Burgeſſes of St. Albans, or the Penman of this Petition, ſhould dare to tell the King, and his Learned Council, in the Face of the Parliament, ſo ridiculous a Novelty, to be recorded to Poſterity, as that they and their Predeceſſors in the Time of King Edward I. and his Proge-
 nitors,

nitors, had sent two Burgeſſes to every Parliament, or that the King and his Council ſhould have ever received this Petition without Indignation, and a ſevere Rebuke for their Impudence ; if all the World then knew, (as certainly they muſt, were it true) that there was never any Election of Burgeſſes to Parliament before the 49th of Henry III. (which was but Fifty Years before the 8th of Edward II.) from thence had appeared no more till the 18th of Edward I. which was but 24 Years before the Delivery of this Petition, a Time which muſt have been then freſh in the Memories of moſt of the King's Council there preſent : Whereas they allow this general Claim of Preſcription. And every Perſon, (tho' but meanly ſkill'd in our Law) does underſtand a general Preſcription, viz. *à tempore cujus contrarium memoria hominum non exiſtit*, what it was then, and ſo remains, by the Law of England at this Day, as appears by our Ancient Records, Law-Books, and Judicial Proceedings.

And ſurely the Burgeſſes of St. Albans did not ground their Petition of Right upon bare Affirmation, but the Juſtice and Certainty of their Claim, as they very well knew, wherefore ſo they prayed it might be examined by uncontrollable Proofs, the Rolls of Chancery. And the King, Chancellor, and all the Council, did no leſs know there were ſuch Entries on the Rolls, and therefore order'd their Search. Whereas if the very Ground of their Petition had been notoriously falſe and idle (as it muſt have been, if neither this, nor any other Borough had ſent Burgeſſes to Parliament before the 49th of Henry III.) then inſtead of recording this Petition and Answer, to future Ages, they would with Contempt and Indignation have rejected it ; nor would the Abbot of St. Alban's Council, and the Sheriff of Hertford, againſt whom this Petition was exhibited, have been wanting in their own Defence to have ſhewed that this Ancient Preſcription, not only of this, but of all other Boroughs, was a meer Chimera and Fable. But inſtead of this, we do not find they made any Oppoſition againſt it, becauſe they knew they had been ſummoned and appeared at divers Parliaments before that Time ; as you may ſee in Prin's Parliamentary Register they were in the 28th of Edward I. which is almoſt as early as we have any Writs of Summons left us to the Commons of this King's Reign. And tho' it is true, the Sheriff of Hertford in this 28th Year, returns that the Bailiffs had made no Return of the Precept ſent them ; yet this plainly proves that they were then look'd upon as a Borough, and that it was very well known that it was wont to ſend Burgeſſes to Parliament, or elſe it had been a vain thing for him to have ſent them any ſuch Precept at all. And tho' it is alſo true, there are no more Returns from St. Albans left us till the 35th of Edward I. yet that is no good Argument againſt their Appearance in the former Years ; ſince the Writs and Returns upon them being in looſe bits of Parchment, might very well be loſt, as well as they are for many other Places. But that the Burgeſſes of St. Albans were ſummoned, and appeared in Parliament in the 35th of Edward I. appears (tho' the Returns be loſt) by the Writs of Expences of this Year (being the firſt we have left us in Prin's Parliamentary Register) for the Cities and Boroughs ; in which Liſt, the Burgeſſes of St. Albans are firſt upon the Roll. And that they were in Parliament before this Time, may further appear by that Clauſe at the end of the Writ which I have already taken notice of, viz. That they were to have their Expences for coming, ſtaying, and returning, *prout in caſu conſimili fieri conſuevit* ; which words relate to Ancient Cuſtom, and extend to St. Albans, as well as to any other Borough there mentioned. And that they alſo were ſummoned and appeared in *primo & ſecundo* of Edward II. (in whoſe Reign this Petition was exhibited,) you may ſee in Prin's Parliamentary Registers, both Third and Fourth Parts ; in the laſt of which you may find the Names of the Burgeſſes return'd in the Firſt and Fifth of this King ; as they might have been ſeen alſo in the Second, had not the Return (as Mr. Prin then acknowledges) been torn off ; tho' it is plain that they appeared there ; and ſo may be likewiſe loſt for all the reſt of the Years of this King, till the Second of Edward III. when we find they appeared again, and ſo continue to ſend Burgeſſes to this Day. And if it be a good Argument of their Non-appearance from the defect of Records, I'll undertake to prove that London and ſeveral other Cities did not ſend any Citizens to Parliament in ſeveral Kings Reigns, as you may ſee in this Liſt of Towns (whoſe Writs of Expences we now mentioned) of the 35th of King Edward I. where London, and moſt other great Cities are omitted, and yet St. Albans is in. To conclude, it is certain, that this was no new Claim of this Borough ; as appears by a

Ibid. p. 11.

Parl. 3. p. 202.

Parl. 4 p. 36.
B. 7.

P. 200. p. 900.

Vid. Breve 5.
Ed. 2. in Bunde-
dello.

a Writ of the 5th of *Edward II.* to the Sheriff of *Hertsford*, that the Bailiffs of the Abbot having refused to levy the Expences for *Ralph* and *Peter Picot*, who had served as Burgeses for the said Town in the last Parliament; whereupon the said *Ralph* and *Peter* set forth before the King, that the said Town used not to be taxed with other Boroughs of the said County for the Expences of Knights, *totis temporibus retroactis*; but that it is a Free Borough, and used to be summoned to Parliaments, which have been summoned by the King and his Progenitors *temporibus retroactis*; and that the Burgeses of the said Town used to receive their Expences as the Burgeses of other Boroughs of the Kingdom. To which Plea and Petition of the said Burgeses, when the King had appointed a Day both to the said Burgeses and Bailiffs of the Abbot, to appear before him in Chancery, they failing at the Day appointed, the King therefore issued out this Writ to the Sheriff of *Hertsford* to summon the said Abbot and Bailiffs to appear again before him, to shew Cause why the said *Ralph* and *Peter* should not receive their Expences as aforesaid.

M. I will consider further of this Argument; for I must ingenuously confess I never heard or understood so much of this Matter before: But pray proceed to the rest of your Authorities.

F. But that it was not only the Opinion of the Borough of *St. Albans*, and admitted by the King and his Council, but that also that it was the Belief of succeeding Parliaments, that the Commons were part of the great Council of the Kingdom long before the 49th of *Henry III.* for Proof of which, I desire you to call to mind that King *John* in the 14th of his Reign made himself and Crown tributary to the Pope.

P. R. C. p. 24.
Vid. Mat. Paris
Anno 1213.

Rot. Parl. 40.
Ed. 3. n. 7, 8.

But Anno 40 *Edward III.* when the Pope demanded the Arrears of this Tribute from the King; the Prelates, Dukes, Counts, Barons and Commons, upon their full Deliberation in Parliament, resolved with one Accord, that neither the King, nor any other could put the Realm, nor People thereof into such Subjection, *sanz assent de eux*, without their Assent, *viz.* as well of the Commons as of the Lords; and that it appeared by many Evidences, that if he had so done, it was done *sanz leur assent*, and contrary to his Coronation Oath, &c. Now what can be more plain, than that above Three Hundred Years ago there was not the least Dispute that the Commons of *England*, (of which the Citizens and Burgeses were then undoubtedly a Part) ought to have been present in the *Commune Concilium Regni*, or Parliament of King *John's* Reign, and to have assented to that King's Resignation, to make it legal and valid, as well as the Prelates, Earls, and Barons.

B. A. P. p. 70.

M. As for this Argument, I need trouble my self no further than to give you the Dr's Answer in his own Words, *viz.* " All that the Resolution of this Parliament in this Case proves, is, that King *John* could not subject himself, his Realm or People, without their Assent; but proves not who they were that in such Cases at that Time gave or denied their Assent, or how they did it; or whether 153 Years before this Resolution, the Commons were represented by Knights, Citizens, and Burgeses as at this Day. The Prelates and Barons gave their Answer first, that such a Subjection could not be made without their Assent, and then the Commons were asked what their Thoughts were, and they answered in the same Manner, and in the same Words the Barons had done, and when they answer all together, they do it in the same Form of Speech, conceived first by the Barons, without any Consideration whether the Commons were the same Body of Men, at the Time of executing the Charter of King *John's* Subjection, &c. as at that present, or no.

F. I must tell you, I am not at all satisfied with this Reply of the Dr's. For if there is no heed to be taken of the House of Commons Answer to the Pope, given in so solemn a Manner as this was, there is no Credit to be given to any Thing they could say, if they are once suppos'd to speak like Parrots by rote, and only as they were taught by the Lords, without any Consideration of the Truth or Falseness of what they averred. And tho' the first Proposal of this Matter was by the King to the Lords, yet the Pope then threatening to excommunicate the King, and put the whole Realm under an Interdict; it was certainly the Interest as well of the Commons as the Lords, to avoid the Blow by a wary and true Answer to the Pope's Demands. For had their Answer been so idle and frivolous, as you would make it, it would have been Advantage enough for the Pope to have returned in Answer to this Letter, (had what the Dr. alledges been true) that the upstart House of Commons had nothing to do to meddle or treat of any such Matter, since

since they were none of the Parties to the Agreement, nor one of the Estates, at that Time when King *John* resigned his Crown, and made himself and Kingdom tributary to his Holiness's Predecessors. Nor was the Space of an Hundred Fifty Three Years, from the Time of King *John*, to the 40th of *Edward III.* so far beyond the Memory of Man, as that so memorable a Transaction could not be well known to the Pope, as well as to the House of Commons then in being; since the making them a Third Estate, fell out but in the Time of their Grandfathers; so that it is scarce possible that the Memory of so remarkable a Transaction, of which the whole World then rang, should be lost in Two or Three Generations.

But I shall now proceed to shew you, that as it was the express Judgment both of the Lords and Commons, that King *John* could not make the Kingdom Tributary to the Pope without their Consents in Parliament; so was it the Judgment also of the whole House of Commons in the Second of *Henry V.* and admitted by that Noble Prince and the House of Lords, that they ever had been a Member of Parliament, and that no Statute or Law could be made without their Assent; as appears by a Petition or Protestation presented by the said Commons to the King in Parliament, a Copy of which I shall now read to you, as far as it concerns the Matter in Question; "Our Sovereign Lord, your humble and trewe Lieges, "that ben come from the *Comune* of your Lond, bysechin unto your riht twisnes, "that soo as it hath ever be thair Libertie and Freedom, that their should noo Statute, noo Law be made, of less than they yaf thereunto their Assent, considering that the *Comune* of your Lond, the which that is, and ever hath be a Member of your Parlement, been as well Assentirs as Petitioners, that fro this Time forward by Complaint of the *Comune* of eny Mischief, asking Remedy by Mouth of their Speaker for the Commons, outhere else by Petition written, that there never be no Law made thereupon and ingrofed as Statute and Law, neither by Additions, neither by Diminutions by no manner of Term, ne Terms, the which that should change the Sentence and the Intent asked by the Speakers Mouth, or the Petitions by foresaid yeven up in Wryteing by the foresaid without Assent of the foresaid *Comune*, &c. This Petition is so plain that it needs no Comment, therefore pray tell me what you think of it.

P. R. C. p. 39.

Rot. Pat. 2.
H. 5. P. 2.
n. 22.

M. In the first Place give me leave to tell you; that I do not find at all by the King's Answer to this Petition, that the King allowed the Matter of Fact therein set forth to be true, but rather the contrary, as you may see by the Answer it self in these Words; The King of his Grace especial granteth, that fro hensforth nothing be enacted to the Petitions of his *Comune* that be contrary of their asking, whereby they should be bound without their Assent, saving alway to our Leige, (*i. e.* Royal Lord) his *Real Prerogatyf* to grant, and deny, what him lust of their Petitions, and Askings aforesaid.

And I shall farther give you the Dr's Answer to this Argument, which is to this Effect; "The Design of this Petition was not to set forth the Antiquity of their Existence, but their Right, that nothing might be enacted without their Assent contrary to their Intent and Liking; and to shew you it was never done since the Commons were a Third Estate, or (as they say) a Member of Parliament, therefore 'tis needless to prove that which no body denies, that the Assent of the Commons was then and is now required to the making of all Statutes and Laws. But pray give me leave to ask you (with the Dr.) What, were the Commons of *England* as now represented by Knights, Citizens and Burgeesses, ever an essential *constituent* Part of the Parliament from Eternity, before Man was created? Or have they been so ever since *Adam*? Or ever since *England* was Peopled? Or ever since the *Britans*, *Romans*, and *Saxons* inhabited this Island? Certainly there was a Time when they began to be so represented. And that this is the Question between us, concerning which, whether you or my self be in the Right, I durst leave to any impartial Judge.

B. A. P. p. 86.

F. But notwithstanding your Dr's Answer, I think the King and Lords did here allow the Substance of this Petition or Claim, as the main Ground and Foundation on which it was built, *viz.* That the Commons had *ever been Members of Parliament*; and therefore that no Law, or Statute should be made without their Assents (which Encroachment upon their Liberties, it seems had been before endeavoured by the King and Lords;) and therefore let me tell you, that the Answer of the King in Parliament, is rather a full Concession of the Truth of the Commons Claim; otherwise it is not to be imagined that the King and Lords would have left such

P. R. C. p. 41.
 Ryley's Placit.
 Parl. p. 619.
 Pet. Parl. 18.
 E. 2. n. 2.

a Claim as of ancient Right, without any Denial or Protestation against it. But instead of this, the King and Lords allow the whole to be true; only the King reserved to himself his Negative Voice of granting or denying what he pleased; which the Commons themselves do also allow him in the Conclusion to the Petition it self, as you may see, if you please to read it at large. And farther, that this Affirmation of the Commons was no other than a Renovation, or Memorial of the ancient Law of the Land, in that Point, is more fully explained and confirmed by a Petition to King *Edward II.* in Parliament, of all the Bishops, Prelates, Counts, Barons, and others of the Commonalty, in the 18th of his Reign, about an 100 Years before this of the 9th of *Henry V.* setting forth, That they held their Manors of the King *in Capite*, as well within the Forests as without; to which Manors they held *Gafz* (i. e. *Wast*) Appendant, and of which the Seignories had been rented out by the Acre, half Acre, and Rood, in improving their said Manors, and that thereupon the Officers of the King had made Seizure thereof, because they had not the King's License so to do; and therefore pray they may improve their said Manors, &c". To which Petition it was answered by the King and his learned Council in Parliament, That this could not be done without a new Law; to do which the Commonalty of the Land will never Assent; and concludes, *Infra coram Rege*. From whence I make these Observations, That the King and his Council do hereby declare it, (as the ancient Custom of *England*;) that no new Law could then be without the Assent of the Commons or Commonalty of the Land; and also, that this Commonalty was a distinct Body from the Commonalty of the Tenants *in Capite* before-mentioned, who were the Persons that put up this Petition.

Rot. Parl. 18.
 Ed. 3. m. 56.

And besides this, I can shew you divers Precedents to the same Purpose; and particularly a Declaration or Protestation to *Edward III.* by the Commons in Parliament, that they would not be obliged to any Statutes or Ordinances, without the Assent of them the said Commons. Which is also farther confirmed by another Petition of Right, or a Protestation of the Commons to King *Richard II.* as it is to be found in the Parliament Rolls of the 6th of *Richard II.* (Pt. 1. m. 52.) wherein they pray against a pretended Statute made by the King and the Lords, against those who in the Statute of *Henry IV.* are called *Lollards*; in which they set forth, that the said Statute was never assented to by the Commons; and therefore pray that it may be annulled. And pray observe the Reason, for it was not their Intent to be justified, nor to oblige themselves, or their Successors, to the Prelates, more than their Ancestors have been in Times past.

From all which we may observe, that the Commons do by all these Petitions and Protestations, make as strong a Claim by Prescription for themselves and their Ancestors not being bound by the Acts of the Bishops and Lords, as the King could make for himself and his Ancestors, touching his own Prerogative by Prescription. But as for your Queries on this Petition, since they are not your own, give me leave to tell you, I look upon them as impertinent: For who ever suppos'd that the Commons claim'd a Right by Prescription ever since the Creation, or ever since the first Peopling of this Island? Since any Body may see, that this Word *ever* is to be understood according to the Nature of the Subject in hand, viz. from the first Institution of the *Saxon* Government in this Island. Now pray give me leave to put you a Case; Suppose you should affirm, that the Crown of *England* hath ever been successive, and not elective; would it not be meer cavilling, to ask you, whether it was so, *jure Divino*, ever since *Adam*? But as you will leave it to any impartial Judge, who is in the Right, you or I, so shall I likewise leave it to them to consider, which is most likely, That your self, your Dr. and some of our Modern Antiquaries, should make the House of Commons no ancients than about the latter End of *Henry III.* or middle of *Edward I.*'s Reign; or the constant Judgment of both Houses of Parliament, with the Assent of the King, and his learned Council, who have insisted upon the Consent of the Commons, as their ancient and undoubted Right, beyond all Time of Memory.

M. I must confess you have proved it plain enough, that it was the constant Opinion of more than one Parliament, that the Commons have been before the 49th of *Henry III.* Members of the great Council of the Nation; but how long before that, they do not set forth. But since Parliaments are no more infallible than general Councils, I hope you will pardon me if I do not give absolute Credit to their Testimony; since in an illiterate Age, as that was in which the Com-

mons

mons make this Petition, it might happen that not only they but the King himself, and his Council at that Time, might not certainly know, how long and how little a Time the Commons had been summoned to Parliament. Therefore since all the Writs of Summons to them before the 49th of *Henry III.* are lost, I pray shew me from this general Right of Prescription you so much talk of, that there must have been Commons summoned to Parliament before that Time; for I have now somewhat very material out of Mr. *Pryn's* Parliamentary Register, to object against Mr. *Lambard's* Argument from the Plea of the Tenants in ancient Demesne being exempted by Prescription, from paying to the Wages of Knights of the Shires; (as you told me at our last Meeting but one.) But first let me hear the rest of your Arguments from this Prescription of Knights, Citizens and Burgeses appearing in Parliament, before the 49th of *Henry III.* For since you have now proved they were there by an undeniable Record in the 11th of *Edward I.* I shall now confine my self to Sir *Henry Spelman's* and Sir *William Dugdale's* (as well as the Dr.'s first) Term of the 49th of *Henry III.*

F. I shall observe your Desires, and in performing of which, I shall pursue this Method; I shall first give you a general Definition of Prescription, and shall then prove, that the Knights, Citizens and Burgeses, have always claimed to appear in Parliament by vertue of this general Right of Prescription. Now the Terms of the Law tell us, "That Prescription is, when a Man claimeth any Thing for that he and his Ancestors and Predecessors, whose Estates he holds, had, or used any Thing in all Times whereof no Memory is to the contrary": Now pray let us see to what Time this is limited, that shall be said to be within Memory, and what was anciently counted beyond time of Memory in a Prescription: Which may be best learnt from a Petition of the Commons to King *Edward III.* Rot. Parl. 43. E. 3. n. 16. in the 43d of his Reign, which is to be found in the Parliament Roll of that Year; wherein among other Petitions of the Commons, this is one, which I shall render and abridge out of *French.* "Item, because the whole Time of King *Richard I.* is held for *temps de Memorie*, that it would please the King farther to limit this Time; so that it do not pass the Coronation of King *Edward*, Grandfather to the King that now is. But mark the King's Answer to this Petition, "Let the Law continue as hath been hitherto used, until it be otherwise ordain'd". So that since there has been no Alteration in this Point from the Reign of *Edward III.* then the Time beyond Memory, or whereof there is no Memory to the contrary, continues still beyond the Time of *Richard I.*; for *Littleton* tells us, that all the Time of *Richard I.* is Time of Memory; and therefore Sir *Edward Cooke* in his Comment upon him, says, "That this was intended from the first Year of his Reign, for (from that Time) being indefinitely, doth take in all the whole Time of his Reign, which is to be observed."

Having fixt a certain Time of a general Prescription beyond Memory, I shall now proceed to shew you, that the Claim of the Commons appearing at the Common Council or Parliament of the Kingdom is beyond that Time. Which since I cannot do directly, (by Reason of the Loss of the Records of Parliament of those Times) any farther than has been already in the Case of the Burgeses of *St. Albans* (which alone is, I think, sufficient to satisfy any reasonable Man) we must therefore make use of such Collateral Proofs and Records, which tho' they do not directly, yet by undeniable Consequence will prove the Point in Question. I shall therefore in the first Place make use of a Writ in the Exchequer of the 34th of *Edward I.* directed to the Barons thereof, reciting, "That whereas the Men of County of *Warwick*; and yet that the Taxers and Collectors of the said County have endeavoured to levy a 3oth of their Goods (towards an Aid granted by the Communities of the Cities and Boroughs to the King) to their Damage and Impoverishment; and therefore pray remedy: The King therefore orders, that the Rolls be search'd concerning such Taxations in the said Town; and if it evidently appear by them, that it is as they set forth, and that the said Men were always taxed with others without the Towns, Boroughs and Manors aforesaid, in all Payments of this Sort; that then they should not permit the said Taxers and Collectors to distrain the said Inhabitants to pay the King by reason of the

Lib. 2. Sect. 170. p. 115.

InterCommunia in scaccario penes Rememorat.

"said Concession of a 30th, otherwise, *quam in totis temporibus retroactis in hujusmodi casu fieri consueverit, &c*". From which Record we may draw these Conclusions, First, That this Town of *Coventry* did not hold of the King, and yet was a Borough, and as such sent Members to Parliament in the 26th, 28th, and 30th of *Edward I.* as appears by the Return of Writs of that Year. Secondly, That yet it prescribed, *totis temporibus retroactis*, in all Times past, to be taxed with the Body of the County, and not with the Communities of the Cities and Boroughs, in all Taxes granted to the King and his Progenitors; which plainly shews, that the Cities and Boroughs granted Taxes by themselves in the Times of his Progenitors, that is, in the Time of King *John* at the least. Lastly, That the King orders the Rolls to be searched; which had been idle Direction, had it then been known or believed, that the Cities and Boroughs never gave any Taxes for themselves in Parliament before the 49th of *Henry III.* but little above Forty Years before the Date of this Writ.

I shall shew you a like Writ (which is to be found in the same Place) for the Towns-men and Tenants of *Beverly* in the County of *York*, in the 8th of *Edward II.* setting forth in their Petition, that they had been taxed to the 20th lately given to the King *per Communitates Comitatum*, (i. e. the Commons of the Counties) by the Taxers and Collectors of a Subsidy of the 20th in the said County; altho' they and their Ancestors had been accustomed to be taxed to all Aids, as well to the King, as to his Progenitors, granted *per Communitates Comitatum ejusdem Regni*, with the Community of the County, and not with the *Communitates Civitatum & Burgorum*; yet that the Taxers and Collectors of the 15th, lately granted by the Commons of the Cities and Boroughs, do grievously distrain them, to their great Damage, and therefore pray remedy. Whereupon the King commands that the Rolls be search'd of such like Taxations; and if it appear that the said Town has been always hitherto taxed, as they in their Petition set forth, that then they shall be discharged from the said 15th.

From which Record we may conclude, that this Town of *Beverly*, tho' an ancient Borough, (and as such was summoned to send Burgesses to Parliament in the 26th of this King) yet did not hold of the King *in Capite*, nor in ancient Demesne. Secondly, That Aids had been given the King and his Progenitors *per Communitates Comitatum*, i. e. by the Commons of the Counties; which could not be done but by their lawful Representatives, and that in Parliament. But how far these Progenitors must extend, I need not repeat to you; the Ground of which Petition being admitted by the King in Parliament.

M. These Authorities tho' material, yet do not in my Opinion reach the Point you were to prove, *viz.* That the Knights, Citizens and Burgesses appeared in Parliament before the Reign of *Richard I.* for both these Authorities, (tho' admitted for good) yet reached no higher than King *John's* Time, which is within Memory, as your self have now set forth, since the Word *Progenitors* need not be extended any farther than the Time of that King, who was great Grandfather to *Edward* the First and Second, to whom these Petitions were made by these Towns-men, and so do not clearly amount to your full Time of Prescription, *viz.* before the Reign of *Richard I.*

F. Well, if you grant this, you have lost your Cause, since certainly the Reign of King *John* is long before the 49th of *Henry III.* but since you will be so overcritical, I will shew you some Claims by Prescription beyond all Time of Memory, made by the Tenants in ancient Demesne, from being taxed to contribute to the Wages of Knights of Shires; and if they thus prescribed, it is plain there must have been Knights of Shires chosen, against paying whose Wages they prescribed to have had this Privilege. Now this Prescription must be very ancient, since as Mr. *Lambard* shews us in the Place I have quoted, there has been no new Tenants in ancient Demesne, since the Time of *William I.* But pray see the Writ it self in the old Register of Writs, (which by the Bye is there put down only as a Form for drawing all other Writs of this kind, there to be found, for other Towns, and particularly the Tenants of *Odibam* in *Hampshire*, whenever there was occasion;) and therefore it is not to be wonder'd that neither the Name of the King, nor of the Place be expressed in Words at length. The Writ it self is not very long, therefore I shall give it you in *Latin* as far as is material: *Rex Vicecomiti L. salutem monstraverunt nobis homines, & Tenentes de Manerio de F. quod est de Antiquo Dominico Corone Angliæ ut dicitur quod licet ipsi & eorum Antecessores Tenentes de eodem*

Vid. Fryn's Parliament. Registr. Part 2d. p. 40, 55.

Vid. Fryn's Parliament Registr. Part 2. p. 46.

Fol. 261.

eadem Manerie a tempore quo non extat memoria semper hactenus quieti esse consueverunt de expensis Militum ad Parliamenta nostra & Progenitorum nostrorum Regum Angliæ pro Communitate dicti Comitatus venientium, &c. and then proceeds, "That
" whereas the Sheriff distrains the said Tenants to contribute to the Expences of
" the Knights that came to the last Parliament, to their great Damage, otherwise
" than *totis retroactis temporibus fieri non uerit* ; therefore commands him that he
" desist from his said Distress, and do not compel the said Tenants to contribute
" otherwise *quam omnibus temporibus retroactis*. And now tho' this Writ be
without any King's Name or Date, yet it appears at the Bottom it was issued
by G. L. *Eserope* then Chancellor, and *William de Herlston*, Clerk of the Chancery;
and this must have been before the 15th of that King, because it appears by
the Close Rolls of that Year, that in December the Great Seal was delivered to
William d' Ayremyn, under the Seals of *William de Clyffe*, and the said *William de*
Herlston, Clerks of Chancery ; who are often mentioned in our Records to have
been Keepers of it *pro tempore*, till the Second of Edward III. when the said
William de Herlston had the sole Custody thereof committed to him.

R. t. Clau. 1. c.
E. 2. m. 27.
d. in Secula.

R. t. Clau. 2.
Ed. 2. m. 33.
cap. 1.

Clau. 50. E. 2.
p. 2. m. 17. d. 10.

But there is yet a perfecter Writ of this kind in the 50th of Edward III. extant
in the Rolls directed to *John de Cobham*, and Four other Knights therein named,
reciting that whereas *Simon* Archbishop of *Canterbury* claims as well for himself
as his Predecessors, and their Tenants, hitherto *a tempore quo non extat memoria*,
for certain Lands held in *Gavel-kind* in the County of *Kent*, which ought to be
free from the Expences of Knights coming to our Parliaments, as well as those of
our Progenitors ; and concludes with a *Superfedeas* to the said Sheriff not to molest
the said Tenants, until such Time as the King be further informed, and that
He by the Advice of his Council has ordained what is to be done in the Premises.
From both which Writs we may draw these Conclusions ; First, That there was
at the Time of the granting these Writs, a Claim by Prescription, Time out of
Mind, allowed for all Tenants holding of the Archbishop in *Gavel-kind*, to be
exempted from contributing to the Wages of Knights of the Shire ; or else these
Petitions, and the Writs upon them, had been idle and ridiculous.

Lastly, That this Claim of being thus exempted Time out of Mind (which as I
have already proved, extends beyond the Time of *Richard I.*) is allowed by the
King himself for good in both these Writs ; only in the last the King will be informed
whether they are Tenants in *Gavel-kind* or not. So that the Conclusion
must be, That if these Tenants in Ancient Demesne, and *Gavel-kind*, were always
exempted from paying to the Wages of Knights of the Shire beyond Memory,
i. e. by Prescription, then certainly those Knights must have been chosen Time
beyond Memory. I could give you several other Writs of like Nature, but I
will not overcharge you. Now certainly if the Knights of Shires were thus
elected Time beyond Memory, the Citizens and Burgeses must have been so too,
since in *Scotland* where there were for a long Time no Commissioners for the Shires
yet the Cities and Boroughs ever sent Delegates to Parliament, as your Dr. himself
allows.

M. I must beg your Pardon if I cannot come over to your Opinion, concerning
this Prescription of Knights of Shires, Citizens and Burgeses appearing in
Parliament before the 49th of *Henry III.* since Mr. *Pryn* in his Second and Third
Part of his Parliamentary Register has proved, 1. That all the Words you insist
upon to prove this Prescription, are to be understood in another Sense than what
you will now put upon them ; so that tho' Mr. *Lambard* and others of great
Note lay the Original Title and Right of all our Counties, ancient Cities and
Boroughs electing and sending of Burgeses to Parliament, to be by Prescription
Time out of Mind, long before the Conquest ; yet against this Opinion Mr.
Pryn argues thus (whose Arguments I shall contract, because it would be tedious
to recite them all *verbatim*.) That as for the Wages of Knights of Shires (which is
the Principal Thing you insist on in this Argument) the ancientest Writ extant for
their Wages, are those of 28th and 29th of *Edward I.* and no Records or Law-
Books I have seen, derive their Title higher than the Reign of *Edward I.* The first
Statute concerning them is that of the 12th of *Richard II.* which only enacts,
that the levying Expences of Knights shall be as hath been used of old Time.

Utd. Observa-
tions on Writs
of Summons.
Part 2. p. 173.
Part 3. Sect. 8.
per totum.

Part 2. p. 175.

Cap. 12.

Cap. 1.

The next Statute of the 11th of *Henry IV.* enacts that Knights of Shires unduly
returned, shall lose their Wages of the Parliament of old Time accustomed, not at, or
before the Conquest accustomed : Yea no Man can prove there were any Knights for

Counties

Counties elected, and sent to Parliaments by the King's Writs, before the 49th of Henry III. not to the Reign of the Conqueror, or before the Conquest, as Mr. Lambard would strain it. Now as for the Words *Antecessores & Progenitores* in the Writs you have cited, the former may very well signify the Ancestors of those Inhabitants of Boroughs or Towns, and the latter the Predecessors of the King that then was, which in the Time of Edward II. and Edward III. when those Writs were granted, need extend no higher than the 49th of Henry III. ; and as for those other Words in these Writs, as *tetis temporibus retroactis*, and *a tempore quo non extat memoria*, they must have the like Interpretation, or what is equivalent to it, viz. in all Times passed, or Time out of Mind ; i. e. before there were any Knights elected for the Counties, they were always free from contributing to their Wages ; so that this Prescription need not extend higher than the 49th of Henry III. above-mentioned ; since which Time it is true (as they there set forth) that they and their Ancestors in all Times, or Time beyond Memory, have always used to be quit from such Expences of Knights : Now there were many Prescriptions and Customs in use in Edward III's Time, and since, which may be well said to be Time out of Mind, yet certainly had their Original not before, but long since the Conquest, as you may read in Brooks, Fitzherbert, and other Law-Books, Title Custom, and Prescription ; and Coke's first Instit. My Lord Hubbard in his Reports ; That which hath been used, or prescribed in but Two or Three Ages only, or out of the Memory or Mind of Men then being, is reputed a Legal Custom, or Prescription, 34 Hen. VI. Brook's Tit. Prescription. Therefore this Prescription of Tenants in ancient Demesne to be exempted from contributing to Knights Wages, will no ways warrant Mr. Lambard's Conclusion from it ; Ergo, there were Elections of Knights of Shires before the Conquest. I am certain that at this Day Tenants in ancient Demesne can plead, that both they and their Ancestors, Time out of Mind, never were accustomed to pay Excise for any thing for which Excise is now paid ; will it not therefore follow, ergo, all other Places now subject to pay Excise, were liable to it before the Conquest, when it is a Duty imposed but since the late Wars ? So that Mr. Pryn here proves, that your and Mr. Lambard's Argument from the Tenants in ancient Demesne, and Gavel-kind, not paying in all Times past, or Time beyond Memory, to the Wages of Knights of the Shires, is altogether fallacious, and inconclusive.

I Pray Sir give me leave to reply to your Answer before you proceed to speak of Boroughs. First let me tell you, Mr Pryn very much forgot himself when he here says, that the first Writs for Wages of Knights of Shires are but of the 28th or 29th of Edward I. since you know better ; for your Doctor has printed the Writs of Expences for the Knights of Shires that served in this Parliament of the 49th of Henry III. and you your self have urged it to me, that this was the first Time that these Knights had their Expences allowed them, because there was no Clause of *prout in Casu simili*, expressed therein ; which I told you might only be through Inadvertency of the Clerks ; since the Doctor there gives us another Writ of the 42d of that King, whereby it appears that the Four Knights of Counties who had appeared before the King and his Council at the foregoing Parliament, were ordered their Expences, for going, returning, and staying at the said Parliament : Which shews that these Writs were no new Things ; and if so be these Knights had their Expences allowed them only for their Attendance at a Parliament, it is much more reasonable and likely they had their Expences allowed when they made a Part of it.

But to put this out of all doubt, Mr. Pryn himself has cleared this Point, not only by printing this very Writ in the 4th Part of his Parliamentary Register, but by declaring in the very first Section of that Volume, that tho' after this Writ no more are to be found of this Sort extant upon the Rolls of Henry III. till the 28th of Edward I. yet they were constantly issued out at the End of every Parliament held after the 49th of Henry III. till the 28th of Edward I. (being 35 Years Space) as this Clause in the Writs of the 28th, 29th and 33d of Edward I. *prout alias in Casu consimili fieri consuevit*, assures us. But all the Bundles of Writs from the 49th of Henry III. till the 29th of Edward I. being lost ; and no Writs of Summons from the 49th of Henry III. entred in the Clause Rolls till the 22d of Edward I. tho' returnable into Chancery, no wonder that these Writs *de Expensis* (then not returnable at all) were

Fol. 58. 113.

P. 117, 118,
158, 159.

B. A. P. 141.

not enrolled till the 28th of *Edward I.* after which they were usually endorsed on the Clause-Roll till the Second of *Henry V.* So that by Mr. *Pryn's* own Confession, the Loss of the Writs from the 49th of *Henry III.* till the 28th of *Edward I.* is no Argument at all to prove that there were no such Writs before the 49th of *Henry III.* unless you could prove to me, that the Writs and Records of all those Parliaments had been so well preserved, that there are none lost or embezzled, which Mr. *Pryn* acknowledges to the contrary; for if they were lost after the 49th of *Henry III.* pray give me a Reason why the like Writs of Summons and Expences, might not be lost as well before that Time.

Having, I think, sufficiently answered Mr. *Pryn's* Argument from the not finding any Writs of Expences before the 28th of *Edward I.* from what he himself said afterwards upon better Consideration; I shall now proceed to reply to that other Part of his Argument, from the equivocal Use of the Words, *old Times accustomed*, and in a *tempore quo non extat memoria*; which he will have to signify a Space of Time only beyond the Memory of any Man living: Whereas the Words Custom and Accustomed, when used of any general Custom or Usage all over the Realm, is still to be taken in much larger Acceptation, as all our Law-Books will teach you. But I shall not dwell upon this, but shew you that those Authors, whose Works you have read, had no true Notion of this Expression in our ancient Records and Pleadings; viz. *a tempore cujus contrarij memoria non existit*; which has been always understood (as *Littleton* here tells you) for a Time beyond the Reign of King *Richard I.* So that wherever you find these Words, *totis temporibus retroactis*, or *de Temps dont memorie des Homs ne curge al contrarie*, in any Records, they are always to be understood of a Time older than that now mention'd. You may prove a contrary Usage, but before that Time no Deed can be given in Evidence, nor Custom alledged beyond it: And that this is not the Sense of *Littleton* alone (who indeed makes a Query about this Time beyond Memory) I appeal to all our Year-books; and if you please to see all the considerable Law-Learning at once about this Point, pray consult *Roll's* Abridgment (or Common-place-book) Title *Prescription*; where he gives you these Conclusions, from the Year-books, which I shall here read to you in *English*. P. 259.

1. " It is clear enough, that there was a certain Time called Time of Memory in a Prescription; and for this he cites the Year-books of 19. *H. 6.* 75. *per Newton* 1 *E. 4.* 6. *Brook.* 9. *H. 7.* 11. 14 *H. 7.* 1.

" The said Time of Memory in a Prescription was from the Time of King *Richard I.* 20 *H. 6.* 3. *Dyer Mar.* 119. 5. 3. 4. 9. *B.* The Time of King *John* is within Memory, *Lit. Sect.* 170. 34 *H. 6.* 36. *B.* 47. So that the said Time of Memory was from the Beginning of the Reign of King *Richard I.* (who was Brother to King *John*, who was Father to *Henry III.*); for the whole Time of his Reign was within Time of Memory, 20 *H. 6.* *per Newton* again, 13 *H. 4.* 9. *B.* where the Seisin of King *Richard* is allowed for a good Title, and so a Warranty in his Time.

" So it seems by these Words *a tempore cujus contrarij memoria non existit*, is properly and generally intended for all the Time before that; and before the Statute of Limitation, was meant of that against which no Proof could be made to the contrary, either by Testimony or Evidence in any Time before, without any Limitation of Time. The 34 *H. 6.* 36. *B.* 37. seems to prove this; so that the Time of all Prescription was in those Days the same with the Time of Limitation of Seisin in a Writ of Writ, as *Littleton* tells us.

And since you have not as yet brought any considerable Proofs (but only bare negative ones which have been answered,) against this Prescription of the Election of Knights of Shires Time beyond Memory; what you have said to the contrary is little to the purpose; for all the Modern as well as Ancient Law-Books are against this Notion of Mr. *Pryn's*. For in Judge *Yelverton's* Reports, *Gibson* and *Holcroft's* P. 31, 32. Case, you will see that whereas Unity of Possession is by the Statute of the Dissolution of Monasteries a good Discharge of Tithes; yet if the Monastery were founded *deins Temps de Memorie* (as this Abby of *Vale Royal* was in the Time of *Edward I.*) a constant Unity since the Foundation, was held by the whole Court for no good Discharge of Tithes by Prescription as the Plaintiff had laid it; for the Defendant shewing that the said Abby was founded since Time of Memory (tho' above Three Hundred Years old) was a sufficient confessing and avoiding.

P. 113.

P. 113.

So that Mr. Pryn's Arguments whereby he would have the Words, all Times passed, and Time of which no Memory is to the contrary, to signify a much less Space of Time in these Writs I have now cited, and to be restrained within the 49th of Henry the Third, will not signify much, since they are expressly against all our Law Books: Neither doth he cite any Cases for his Opinion out of *Brook* or *Fitzherbert*, tho' he quotes their Titles. But as for this Quotation from *Cook's* first Institutes, there is nothing there to countenance his Notion, more than he tells us that from *Bracton* and *Fleta*, (upon the Words *de Temps dont memorie, &c.*) *docere oportet longum tempus & longum usum; viz. qui excedit memoriam hominum, tale enim tempus sufficit pro Jure*; but without telling us what was then understood by this *memoria hominum*; and a little after upon these Words, *Ascun proof al contrarie*: For if there be any sufficient Proof of Record or Writing to the contrary, albeit it exceed the Memory, or proper Knowledge of any Man living, yet it is within the Memory of Men: For Memory is twofold: First, by Knowledge by Proof; as by Record, or sufficient Matter of Writing. Secondly, By his own proper Knowledge; and for this he cites divers Year-Books in the Margin". But as for all that long Quotation Mr. Pryn has here given us, I know not whence he had it; for there is not any Thing in *Hobart's* Reports to that Purpose, in the Places he has cited. And as for the Year-Book of 34th of Henry the Sixth, and *Brook*, they are both directly against his Notion, as you may see by what *Rolls* has been already quoted from the same Places. And though it is true in Prescriptions of Ways, and Commons, and other such petty Things laid Time beyond Memory, the Judges or Jury are not so exact, as to make the Plaintiffs prove their Prescription beyond the Time of any Man then living: Yet if they prescribe for never so long, it is still in the Power of the Defendant to prove that there was no such Prescription; and this as high as before *Richard* the First, but no higher. And thus high we assert the Coming of Knights of Shires to Parliament; for I do not pretend to lay it as high as the Conquest, or before, as Mr. *Lambard* does. If it prove beyond the Time now specified, it is sufficient to disprove Mr. Pryn's Notion.

But to let you see I am a fair Adversary, I will admit for once, that this Time beyond Memory shall be taken in a strict literal Sense, for only as far as is beyond the Memory of any Man living: Now, pray, see what you will get by it; if you remember that the Writs I but now cited from the Register, for the Tenants in ancient Demesne their being discharged from contributing to the Wages of Knights of the Shires, was laid, *a tempore cujus contrarii memoria non existit*: And these Writs are proved also to have been issued within the 15th of *Edward* the IIId; and if so, pray reckon backwards, and see if the 49th of Henry the IIIId, (when you suppose Knights of Shires to have been first chosen) does not fall within the Memory of most Men then living; for Henry the IIIId reigned somewhat more than Seven Years after this 49th; to which Seven Years, if you add the almost 35 Years Reign of *Edward* I. it makes 42 Years; then add these 15 Years of *Edward* II. and, if you please, see if the whole makes above 57 Years; which certainly was within the Memory of many Men then living: And it had been a senseless Thing for the Chancellor, and Clerks of Chancery, that then were, to have granted these Writs of Exemption for a Time beyond Memory, when they themselves might have remembered when Wages for Knights of Shires first began.

M. As for what you have said for this Prescription of Knights of Shires, I will not dispute it farther with you, since it is a Point of your Common Law, (in which I confess my self but meanly skill'd); but I shall take farther Time to advise with those that know better. In the mean time, as for the Cities and Boroughs, let them have appeared when you will, their coming to Parliament could not be so ancient as before the Time of *Richard* I. much less the Conquest, as you suppose; since Mr. Pryn hath, in the same Second Part of this Parliamentary-Register, traced the Summoning of the Boroughs to their very Original; and proved it could not be ancienter than the 49th of Henry the IIIId. I shall here contract his Arguments, and give you them, as I did the former. First, He here proves, that there were never but 170 Cities and Boroughs, who sent any Members to Parliament; of which 170 (in his Catalogue) Nine of them never had but one or two Precepts, and others but four Precepts of this Nature sent them; upon none of which Precepts the Sheriffs made any Returns of Burgesses, as these *Ballivi Libertatis nullum mihi dederunt responsum, or nihil inde fecerunt*, attest: Whereupon they never had any more Precepts of this Kind sent them to this Day, *Christ-Church* in *Hampshire* only excepted:

Part 2. p. 214.

excepted ; which of late Years hath sent Burgesſes to Parliament ; ſo that in Truth there were only 161 Cities and Boroughs in *England* that ever ſent Members to Parliament, during all the precedent Kings Reigns ; viz. From the 26th of *Edward* the 1ſt to the 12th of *Edward* the 4th. Secondly , That 22 more here named of theſe 161, never elected and returned Burgesſes but once , and no more during all the ſaid Time. Thirdly , That many more of theſe ancient Boroughs here named, never ſent Members, ſome of them more than Twice, others Thrice, others Four, others Five, others Six, others Seven, others Eight Times : And *Lancaster* has but 13 Elections and Returns of Burgesſes, and no more, during all the above-mentioned Reigns. Fourthly , That altho' ſome of theſe Boroughs here named, who ſeldom ſent any Burgesſes, though they were ſummoned by the Sheriff's Precepts to elect Burgesſes, without any great Intervals of Time, to Six or Seven ſucceeding Parliaments, yet moſt of them had a long Diſcontinuance of Time ; ſome of above 200, others above 300 Years Diſtance, between thoſe few reſpective Returns : Of which, he here gives you ſeveral Inſtances, and refers you to his precedent Catalogue of Returns for the Proof of it. So that there were but 112 Cities and Boroughs (taking in the *Cinque-Ports* and all) who ſent Members to Parliament in the Reign of *Edward* the 1ſt : Seven of which made only one Return, and no more, for ought I can diſcover, before or after *Edward* the 1ſt's Reign, till of very late Years. *Ibid.* P. 225, 226.

Yet that in *Edward* the 2d's Reign, there were Precepts iſſued by the Sheriffs, and Returns of Burgesſes for 19 new Boroughs there named, which (for ought I can diſcover) never elected any Burgesſes before. Fifthly , That under this long Reign of *Edward* the 3d, there were Sheriff's Precepts iſſued to 19 more new Boroughs, and Returns made upon them to ſerve in Parliaments, or great Councils, who never ſent any Members before ; and Precepts to more, that made no Returns at all thereupon. As for the *Cinque-Ports* of *Dover*, *Romney*, *Sandwich*, *Wincheſſey*, *Huſtings*, *Hythe*, and *Rye*, though there be no Original Writs for, or Returns of their electing and ſending Barons to Parliament now extant , before the Reign of *Edward* 3d. yet it is apparent , by the Claſſe-Rolls, that they ſent Barons to Parliament in 49th of *Henry*, and during the Reign of *Edward* 1. and 2. Of which more anon. Sixthly , That King *Richard* 2. *Henry* 4. and *Henry* 5. created no new Boroughs at all, neither were there any Writs or Precepts iſſued to, or Election of Citizens or Burgesſes by any new Cities or Boroughs, but ſuch as elected them before their Reigns. Seventhly , That about the miſt of King *Henry* the 6th's long Reign, there were Precepts iſſued to, and Returns made, by Five new Boroughs, and no more, which never ſent Burgesſes to Parliaments before , viz. *Gatton* in *Surrey*, *Heytesbury*, *Hyndford*, *Weſtbury*, and *Wootton-Baſſet*, all in *Wiltſhire* ; yet very poor inconfiderable Boroughs, though they elect Burgesſes at this Day. That during *Edward* the 4th's Reign, there was one new Borough, (here named) which began to ſend Burgesſes to Parliament under him, though it never ſent any before. *Ibid.* P. 227, 228.

F. Well, but how came this about, that ſo many new Boroughs were made in ſome Kings Reigns, and few or none in others ; and ſo many omitted, that had ſerved before in other Parliaments ?

M. Pray read on, and you will ſee, this Author gives us a very good Account of that ; and imputes it to Two Cauſes. Firſt, The Partiality and Favour of the Sheriffs, and the Ambition of the Neighbouring Gentry, who deſired to be elected in ſuch new Boroughs. Secondly, The meer Grace and Favour of the King, who by divers Charters to new Corporations have given them the Privilege of ſending Burgesſes to Parliaments. For Proof of which, pray ſee what this Author here farther ſays. It is evident by the precedent Sections, and Catalogue of ancient Cities, Boroughs, Ports, and their Returns of Writs and Elections before ſpecified with theſe general Claſſes after them, *Non ſunt alie, or ulle Civitates nec Burgi in Bal-liva mea, or in Comitatu prædiſto, præter Wycombe, &c.* As you may ſee by the Return of the Sheriff of *Bucks*, Anno 26. of *Edward* 1. where he denies there were any Cities or Boroughs in his whole County ; and yet the very next Parliament but one, within Two Years after, the Sheriff of *Bucks* returns no leſs than Three Boroughs ; viz. *Agmondeſham*, *Wycombe*, and *Wendover*, with the Burgesſes Names that were returned : So that the 78 new Boroughs, here named, were lately ſet up in the Counties ſince *Edward* the 4th's Reign, by the Practice of Sheriffs, and the Ambition of private Gentlemen ſeeking to be made Burgesſes for them, and *Ibid.* P. 228, 229, 234.

Consent of the poor Burgesſes of them, being courted and ſeaſted by them for their Votes, without any Charters from the King, and are all mean poor inconfiderable Boroughs, ſet up by the late Returns and Practices of Sheriffs.

Ibid. p. 230.

Ibid. p. 231,
232.

And tho' others may conceive, that the Right of our ancient Boroughs or Cities electing and ſending Burgeſſes and Citizens to our Parliaments, proceeded originally from ſome old Charters of our Kings heretofore granted to them, and to which Opinion I once inclined; yet the Conſideration of the new Diſcovery of the old Original of Writs for electing Knights, Citizens and Burgeſſes, I found in *Cæſar's* Chappel, hath rectified my former Miſtake herein, and abundantly ſatisfied me that neither bare ancient Cuſtom or Preſcription before or ſince the Conqueſt, nor our King's Charters; but the Sheriffs of each County's Precepts and Returns of Elections of Burgeſſes and Citizens for ſuch Boroughs and Cities, as they thought meet by Authority and Power granted to them, in and by this general Clauſe in the Writs of Summons iſſued to Sheriffs, for every County before every Parliament, enjoining them in theſe Words, *Tibi præcipimus firmiter injungentes, quod de Comitatu prædicto duos milites, & de quolibet Civitate duos Cives; & de quolibet Burgo duos Burgenses de discretioribus, &c. ſine dilatione Eligi, & eos ad nos ad dictos diem, & locum venire facias, &c.* By virtue of which general indefinite Clauſes uſed in all Writs of Summons ever ſince the 23d of *Edward I.* without deſigning what particular Cities or Boroughs by Name within each County the Sheriff ſhould cauſe to elect, or ſend Two Citizens or Two Burgeſſes, but leaving it wholly to each Sheriff's Liberty and Diſcretion to ſend the Writ directed to him to what Cities and Boroughs he pleaſed; thereupon every Sheriff uſed a kind of Arbitrary Power in the Execution of this general Clauſe, according as his Judgment directed, or his Affections, Favour, Partiality, Malice, or the Sollicitations of any private Boroughs to him, or of Competitors for Citizens or Burgeſſes Places within his County, ſwayed him. This is moſt apparent by ſome Sheriffs in ſeveral Counties returning more Boroughs and Burgeſſes than their Predeceſſors, others fewer; ſome omitting thoſe Boroughs returned by their Predeceſſors, others cauſing Elections and Returns to be made for ſuch new Boroughs, which never elected or ſent any before, nor after their Sherifſalties, as is evident from the Returns *Annis* 28. 33. *E. 1.* and 34 of *E. 3.* for *Devon.* *Anno* 26. *E. 1.* for *Yorkſhire.* *Anno* 33. *E. 1.* for *Oxfordſhire.* *Anno* 28. *E. 1.* for *Hampſhire.* *Annis* 33 and 34 of *E. 3.* for *Somerſet.* *Annis* 25. 27. and 28. *H. 6.* for *Wiltſ,* &c.

So that the firſt Writs or Memorials of any extant on Record for electing Knights, Citizens, and Burgeſſes to come to Parliament, are thoſe of the 49th of *Henry III.* but theſe Writs only commanded that the Sheriffs ſhould cauſe to come Two Knights, &c. of each County; and the like Writs were directed to the Cities of *London, Lincoln,* and other Boroughs of *England,* to elect Two Citizens and Two Burgeſſes for each of them, and the reſt of the Cities and Boroughs in *England;* the like Writs were alſo iſſued to *Sandwich* and the reſt of the Cinque Ports, without expreſſing their Names, or Number in each County: And this Form I conceive (ſays *Mr. Pryn*) continued till the 23d of *Edward I.* when the afore-cited general Clauſe authorizing and intruſting every Sheriff to cauſe Two Citizens and Two Burgeſſes to be elected, &c. out of every City and Borough in his County, was firſt put into the Writs, by Authority and Colour whereof every Sheriff ſent Precepts to what Cities and Boroughs of his County he pleaſed.

F. I have with Patience heard this long Hiſtory of *Mr. Pryn's* concerning the Election of Citizens and Burgeſſes, from which I muſt notwithstanding make bold to diſſer. For tho' I own him to have been a Man of great Learning and Industry in Matter of Records, yet I doubt he was often too quick in taking up of Opinions upon ſlender Grounds. Therefore for the answering of him, I ſhall firſt ſhew you the Improbability of his Suppoſitions, and in the next Place ſhall make uſe of no other Conſutations than what his own Book will afford us, as to the Writs of Summons, Returns, and other Things he lays ſo much ſtreſs upon. In the firſt Place, for the Notion of Sheriffs ſending Precepts to what Cities and Boroughs they pleaſed, and conſequently making as few or as many ſend Members to Parliament as they would; that this was not ſo at firſt is evident from thoſe very Writs of the 49th of *Henry III.* by which it appears that they were not then directed to the Sheriffs, for any more than to the Counties; but as for the Citizens and Burgeſſes, and Barons of the Cinque Ports, they were then

directed to themselves; and he also confesses, that this continued so from that Time till the 23d of *Edward I.* So that all this while (being about 28 Years) it seems the Nomination of what Cities and Towns should send Members to Parliament did not depend upon the Will of the Sheriffs, but upon somewhat else. And I have asked you once (tho' without receiving any Answer) what Rule *Simon Montford* went by, to tell what Cities and Boroughs were to send Members, and what not, since the Words are only in general, *de quolibet Burgo*, &c. And therefore pray answer me now if you can.

M. I conceive in the first Place, as for the Cities, *Simon Montford* sent to those that were anciently esteemed so, viz. such as had Bishops Sees annex to them, such as *London*, *Lincoln*, particularly named in these Writs, and others of the same Rank; and as for the Boroughs, tho' we have not the Returns of them left us, yet I suppose they were such walled or other Towns, as were of some considerable Note in *England*; such as he thought were most proper for his Turn.

F. That this could be no Rule, appears by this clear Proof. First, That neither *Coventry* and *Litchfield*, tho' the Sees of the Bishops, were counted Cities in the Time of *Edward I.* nor long after; nor yet *Ely*; for it appears by the Lists that Mr. *Pryn* hath given us, that it never sent Burgesses but only once, and that only to a great Council, till of late Years. So that the Sees of the Bishops was it seems no general Rule to make Places capable of sending, or not sending of Citizens to Parliament.

And in the next Place as to Boroughs, that is pure Imagination, that none but considerable or walled Towns sent any Burgesses at first: Whereas in the first List of Returns which Mr. *Pryn* has here given us of the 26th and 28th of *Edward I.* which are the first extant, for ought I know, (except those of the 23d, which I have never yet seen) besides the Shire Towns of the Counties, there are Returns of a great many small Boroughs, which never had any Walls, nor yet (for ought as we can find) had any Thing remarkable to make them be pitch'd upon to send Burgesses more than others. But of these I shall speak more by and by; only shall remark thus much, that there must have been some other Rule besides *Montford's* own Will, for all this; and what this Rule could be, unless an ancient Prescription in those Towns to send Members, I desire you or your Doctor would shew any good Reason or Authority to the contrary.

And after the 23d of *Edward I.* when Mr. *Pryn* supposes that the Sheriffs by this general Clause in the Writs began to take upon them this new Authority of sending Precepts to, and making Boroughs of what Towns they pleased: This could not in the first Place extend to such as were before that, Counties of themselves, such as *London*, *York*, *Bristol*, &c. nor yet such as were ancient and opulent Cities, such as *Canterbury*, *Lincoln*, *Exeter*, &c. who were not made Cities by having Bishops Sees annex to them, but were such long before Christianity was preach'd to the *English Saxons*, as I have already proved. Nor could this Power of the Sheriff extend to the Cinque Ports, whose Right of sending Two Barons for each Port was sure very well known and settled in the 49th of *Henry III.* as appears by these general Words at the Foot of the Writ, *similiter mandatum est singulis Portibus pro se*, without naming them in particular; so that if it had not been sufficiently known what Ports were thus to send, all the considerable Sea-Port Towns in *England* might have had Precepts sent them as well as the Cinque Ports; who had at first their Summons directed to the Barons and Bailiffs in general. Nor is there any Writ found directed to the Warden of the Cinque-Ports to summon each of them to send Burgesses, till the 17th of *Edward II.* as Mr. *Pryn* here shews you: So that in all these Elections and Returns, (being above Twenty) the Sheriff could have no Power, and therefore did not depend upon his good Will and Pleasure alone, as this Author would have it. *Ibid.* p. 245.

But to come to that which Mr. *Pryn* chiefly insists on, viz. the putting in and leaving out divers of the smaller Boroughs in so many King's Reigns, and which he attributes wholly to the Favour or Partiality of the Sheriffs. I shall first argue against the Improbability of the Notion, and shall then confute it by plain Proofs from Mr. *Pryn* himself. First, It is not at all likely, the King should ever trust the Sheriff with this great Prerogative of making what, or as many, Boroughs as he pleased in a County; since that could not be then done without some particular Writ or Charter; for otherwise this had made the Power of the Sheriff more arbitrary than that of the King himself; if he had in those Reigns you treat of, no other Rule to go by than his

his own Humour, Passion, or Interest : Nor would the King have ever endured such an Innovation, since it would have been in the Power of the Sheriffs to have made as many Boroughs as they pleased, and to have increased the House of Commons to an unreasonable Bulk, which was against all Rules of Policy for him to suffer. Lastly, Neither would the House of Commons themselves have suffered this Encroachment : For since most of the Cities and Boroughs of *England* sent Members to Parliament before this Innovation of the Sheriffs began, they would never have quietly permitted new Men to be sent in among them, from obscure Places they never heard of, without either turning them out themselves, or complaining to the King in Parliament of so great an Abuse. Nor yet would these smaller Boroughs themselves have thought it a Privilege in those Days, when they paid their Burgesses Wages all the Time of their Service in Parliament, to be thus forced to elect and send Burgesses to Parliament, whenever the Sheriff pleased to send them a Precept so to do.

Vid. Parl. Reg.
ScH. 8.

M. But what can you say against direct Matter of Fact ? Has not *Mr. Pryn* here plainly proved to you, that the Sheriffs did in those Times exercise an Arbitrary Power in this Matter, returning some Towns out of Ill-will only, to charge them with electing Burgesses, to make them liable to the Payment of Wages to them ; omitting of others also out of Spite, as appears by this Petition of the Towns-Men of *St. Alban's* you have now cited ; a great many of which were so long omitted, that they came at last to lose all Right of sending any more, till it came to be again revived of late Years (as in the Case of divers Boroughs, whose Names *Mr. Pryn* has here given us) who by Orders of the Long Parliament in 1640, again sent Members to Parliament after some Ages Intermission ? Pray now tell me, what other Satisfactory Account can be given, for the making of so many new Boroughs, and omitting so many old ones, but the Arbitrary Power of the Sheriffs, who then took upon them to do what they pleased in this Matter ; as appears by so many Instances he has here given us ?

Ibid. 238.

F. Well, since the Improbability, (I may say Impossibility of the Thing) will not satisfy you, I doubt not but to shew you, that though the Sheriffs might sometimes abuse the Trust committed to them, in sending Precepts to the Boroughs that were not liable to them, yet that for all this they never exercised that Arbitrary Power you fancy, of making and unmaking what Boroughs (and consequently as many Parliament Men) as they pleased. Now to prove this from *Mr. Pryn's* own Instances and Authorities, I shall reduce all the Causes of this Abuse to these Heads : 1. The Favour, or Malice of the Sheriffs. 2. The Ambition of the Neighbouring Gentlemen, who desired to get to be elected at such Boroughs. Or, lastly, From the Desire of those Towns themselves, to get this Privilege among them of Electing and Returning Members to Parliament. To begin with the first of these ; It could never proceed from the Favour of Sheriffs to such Towns, because the Charge of Wages to the Burgesses was then so great (when Two Shillings a Day was more than Ten Shillings is now) that they could never look upon it as a Favour, to have this Charge imposed upon them ; unless it were some few, who were very large, and in a rich and flourishing Condition, and those always sent Burgesses to Parliament before the Sheriffs had this Power committed to them, as you supposed, by that general Clause in the Writ of sending Summons to the Cities and Boroughs. Nor could the Sheriffs (if they would) have long continued to lay this Burthen upon any Town out of Malice ; for if such Towns could not afford this extraordinary Charge of sending Burgesses to Parliament, they might have escaped it whenever they would ; either by making no Returns at all to their Precepts sent them, as *Mr. Pryn* here shews, in the Lists he has given us of Returns, very many of them did ; or else they might have taken that Remedy against it, “ which (as this Author here expressly acknowledges) divers Towns did ; who being maliciously charged by the Sheriffs to send Burgesses, when both unwilling and unable ; and who upon their Refusal to elect, returned Burgesses for them against their Wills ; whereupon they complained to the King or Parliament of the Abuse, and so were eased of this Charge and Trouble, or else eased themselves : Other Boroughs growing very Poor, and unable to send Burgesses to Parliament, and defray their Expences, were thereupon discharged by the Sheriffs who made special Returns in their Favour ; (and of these he gives you several Instances, in his Collection of Returns for the County of *Bucks*, as also in the Case of *Lancaster*) ; whilst others procured perpetual, or else temporary Exemptions from the King and his Council from sending Burgesses to future Parliaments ; and upon

Ibid. p. 233.

Ibid. p. 233.
255.

“ some

“ some one or more of these precedent Grounds, they quitted, waved, or lost
 “ their ancient Privilege of sending Burgesſes, which they rather reputed a
 “ Charge, Burthen, and Oppreſſion, than an Honour”. And of this he gives
 us a remarkable Inſtance in *Toriton* in *Devonſhire*, which after having elected
 and returned Burgesſes to no leſs than Thirty two Parliaments; yet in the 42d
 of *Edward III.* upon their Petition to the King in Parliament, obtained a Patent
 to be exempted for ever, which he here gives us, as alſo a temporary Exemption
 from King *Richard II.* to the Town of *Colcheſter* for Five Years, in regard of
 their great Charge in building their Town-Walls: Which ſhews that the Bur-
 gesſes Wages was then a great Burthen even upon Towns rich and flouriſhing
 in Trade, which were then able to wall their Towns at their own Expence.
 And I could ſhew you more ſuch Exemptions as theſe, were it not too tedj-
 ous; and I doubt not but there were many more ſuch than what are entred
 upon the Rolls.

Ibid. p. 239.

Rot. Parl. 42.

E. 3. part 1.

m. 8.

Ibid. p. 241.

Now that we may apply what Mr. *Pryn* has here ſaid, to our preſent Purpoſe;
 it is granted, that tho’ the Sheriffs might ſometimes oppreſs ſome Towns by
 ſending Precepts to them to elect, who ought not to have ſent Members to Par-
 liament at all; yet that he could not make new Boroughs without the Inhabi-
 tants Conſent, is plain by his own ſhewing, ſince they could be eaſed of
 that Charge whenever they pleaſed. And I deſire you, or any one elſe, to
 ſhew me any City, or conſiderable Town in *England*, that thus began firſt to
 ſend Citizens or Burgesſes to Parliament by the Sheriff’s Arbitrary Power. Not
 but that ſome Towns might complain of this Abufe of the Sheriffs without any
 juſt Cauſe, as in this Petition of *Toriton* now mentioned, where they ſet forth,
quod villa prædicta ad mittend. aliquos homines pro dicta villa ad Parliamenta no-
ſtra onerari non debeat, nec aliquos homines prædicta villa, ad Parliamenta no-
ſtra vel Progenitorum noſtrorum miſerit, nec mittere conſueverit ante annum
Regni noſtri vicesimum primum, &c. Now tho’ this Petition was falſe in Mat-
 ter of Façt, ſince it appears by the former Returns that they had ſent Bugesſes to
 Parliament long before, in the Reigns of *Edward I.* and *II.* yet the Ground of
 their Petition was right, that they ought not to ſend any Men to Parliament,
 unleſs they had been accuſtomed ſo to do in the Time of this King’s Pro-
 genitors; which had been a vain Plea, if it had been in the Sheriff’s Power
 (as of Right) to have ſummoned what Towns they pleaſed to Parliament, ſince
 then there could have been no Cuſtom pleaded againſt it.

Vide the Patent
 of Exemptions,
Parl. Reg.
 part 2.

This being granted by Mr. *Pryn*, and proved from the Nature of the Thing,
 we ſhall come now more particularly to give an Account how ſeveral Towns
 might come to be put in or left out of the Sheriff’s Liſts of the Boroughs,
 without granting them this Arbitrary Power of making what Boroughs they
 pleaſed. Now theſe 170 Cities and Towns Mr. *Pryn* has given us, and which
 have had Precepts ſent them at any Time, may be divided into theſe Three Ranks:
 The Firſt is of thoſe (who being nine in Number) which he ſays never made
 any Returns to the Precepts ſent them, and ſo continue to ſend no Members
 to this Day (except *Chriſt-Church* in *Hampſhire*.) Now theſe Nine Towns either
 had a Right to ſend Burgesſes to Parliament in the King’s Reigns, in which
 they received thoſe Precepts, or they had not; if they had ſuch a Right, the
 Sheriffs did but their Duty to ſend them Precepts as well as to the reſt of the
 Boroughs of the County. For ſure they had ſome Rule for doing it, more
 than their own private Fancies; ſince the very Writ of Summons (from whence you
 would deduce this Power to the Sheriffs) only recites *de qualibet Civitate, &c.*
Et de quolibet Burgo, &c. which had been mighty uncertain, if had not been
 then very well known what Towns were then Cities, and what Boroughs: And
 ſure theſe Nine Towns muſt have then been Boroughs (in Reputation at leaſt) or
 elſe they could never have had one, two, or more Precepts ſent them (as Mr.
Pryn here owns they had) and they might have had many more ſuch for ought
 we know, had all the Sheriff’s Precepts, and the Returns upon them been preſerved,
 as moſt of them are loſt or miſlaid, as I ſhall ſhew more at large by and by. Or if
 theſe Towns had no Right at all to ſend Burgesſes to Parliament, it was not in the
 Sheriff’s Power to impoſe it upon them; ſince they might have reſuſed it if they
 pleaſed. And ſo take it either way, nothing can be argued from the Loſs or Omif-
 ſion of the Returns for theſe Boroughs, that they either had, or had not any
 former

Vid. *Par-*
liam. Regiſt.
 Part 2. p. 224.

Ibid. p. 201.

former Right to elect; since this might happen from the Negligence of the Bailiffs, or Constables of the Town, or else from their own Desire to be excused from the Charge. Thus in the 28th of *Edward I.* the Sheriff returns, that the Bailiffs of *St. Alban's* had made no Return of his Precept: Neither is there any Returns of such Precepts to this Borough all the Reign of this King: Does it therefore follow, That this Town had no more Precepts sent them in all his Reign? When I have shewed you the contrary by the Writs of Expences in the 25th of *Edward I.* Or that they had no other Right to appear in Parliament as a Borough, but what the Sheriff's Precept first gave them; when you see they claimed by their Petition to *Edward II.* to send Burgeses to Parliament in the Reign of this King and his Progenitors.

The Second Rank of Towns are such for which are found, for some one, for some three, and for others more Precepts, with Returns of Elections made thereupon; and yet those that have made the most Returns do not amount during the Reigns of *Edwards I, II, and III. Richard II. Henries IV, V, and VI.* to above Thirteen Returns. Well, granting all this, will it therefore follow, that they had no other Right than the Sheriffs good Will and Pleasure? Since if they had a Right, and were willing to preserve it, they might have petitioned the King in Parliament against this Abuse of the Sheriffs. And if they were willing to give up their Right, by Reason of the great Charge and Trouble of sending their Members, *volenti non fit injuria.* Now does it therefore follow, that no others had any other Right to elect, but what the Sheriff's Precept gave them; only, forsooth, because no more Returns appear either in the loose Bundles of Returns, or upon the Clause-Rolls? Or that therefore there were never any more Elections and Returns made than what Mr. *Pryn* has here given us? Which is a very fallacious Argument, considering how imperfect those Bundles of Returns are, out of which he has extracted them; most of the Precepts and Returns being no doubt lost and broke off the Files, in the removing of the Records from one Place to another; besides the whole Bundles of Returns of several Years in divers Kings Reigns, that are quite lost, or so mislaid, that no body can find them. And for the Truth of this, I appeal to Mr. *Petyt*, who assures me, he found the Returns of the Knights, Citizens, and Burgeses to Parliament of the 23d of *Edward I.* in an old Chest in the *Exchequer*, among other Things of a quite different Nature; which Mr. *Pryn* never saw, or else certainly he would have given us the Returns to this Parliament, as well as he does the Writs of Summons to it: And yet that even these were not always entered upon the Clause-Rolls, but lay scattered up and down the Chapel of the *White-Tower*, Mr. *Pryn* also himself confesses, (in his Introduction to his third Part of his Parliamentary-Register), "That he found no less than Ninety five loose Original Writs for Elections and Returns of Knights, Citizens, and Burgeses to Parliaments and great Councils, in the Reign of *Edward III.* which were never entered on the Clause-Rolls; and lay there until he found them buried in Dust and Rubbish, as well as Oblivion, in a confus'd Chaos, scattered from each other, and intermixed with many Hundred Thousands of other Writs and Records of various Kinds". Now what if these Writs and Returns had never been found? So that by his own Shewing, it is no ways certain that there were never any other Writs issued, or Returns made for the Counties, Cities, and Boroughs, than those he had before found and published. And he himself also here confesses, "That by reason of the Negligence of Record-Keepers, there are more Writs and Returns of Elections extant from some Counties than for others, though all had the like Writs sent them". And if this was so as to the Counties, it might be likewise so as to the Cities and Boroughs; the Returns of which are commonly indorsed on the Back of the Precepts; and where they were not so indorsed, were much more likely to be lost. And farther, that the Clause-Rolls are no exact Rule for the Summons of Knights or Barons of the *Cinque-Ports* and Burgeses, appears by Mr. *Pryn's* own shewing; *viz.* That there are no Writs of Summons to the *Cinque-Ports* entered on the Clause-Rolls, for most Part of the Years of the *Edwards I, II, and III.* in the List he has here given us of those Years. Now if so many considerable Boroughs, as the *Cinque-Boroughs*, could be thus omitted, what can we expect for most of the smaller, and most inconsiderable Boroughs in *England*?

Parl. Regist.
Part 3. p. 243.

To conclude this Head; If by Mr. *Pryn's* own Confession, the Entries of Elections, and Returns upon the Clause-Rolls, are so very imperfect; and that the loose Bundles of Summons, Precepts, and Returns, are far more imperfect (so many of them

them being lost) pray tell me, How can he, or any one else, frame any Argument from these that remain, that there were never any more Precepts to, and Returns from Cities and Boroughs, than those he has published.

But to come to his Third Rank of Boroughs; *viz.* Such as for whom there appear no Precepts nor Returns, till the Reigns of *Edwards II.* and *III.* and other succeeding Kings; all which Boroughs he therefore supposes to have been newly made in those King's Reigns, because there are no Precepts or Returns from them found sooner. It must therefore follow that the Sheriffs made all these Boroughs at their Pleasure; but Mr. *Pryn* has done well here to add, that they never elected or returned any before, *for ought he can find to the contrary*; since it might appear to the contrary (for ought he could tell) if the Returns of the Sheriffs in the Reigns of the former Kings had been still preserved; as appears by the Instance of the Cinque Ports I just now mentioned: Or how could Mr. *Pryn* tell, but divers of these Towns might have been created Boroughs by the King's special Writs or Charters, tho' now lost, or perhaps unknown to this Author, who could not be supposed to understand the Original of all the Boroughs in *England*, their sending Members to Parliament? But that he is certainly mistaken in making several Boroughs to have been but new, because no Returns are to be found from them before the Reign of *Edward II.* may appear by these for Example. First, *Litchfield*, which was long before that Time a Bishop's See; and sure then if not a City, yet an ancient and considerable Borough. Secondly, *Old Sarum*, which was in the Reign of *Henry III.* a Bishop's See (till it was removed) and if not, was certainly a very ancient Borough, and as such sends Burgesses by Prescription to this Day, tho' the Town be quite destroyed. The like I may say of *Gatton* in *Surry*, which tho' Mr. *Pryn* will have but to be a new Borough, because no Returns appear to have been made for it by the Sheriffs, till the Reigns of *Henry VI.* yet this is no certain Rule; since it was a very old Borough, and had anciently been so considerable, as that we find several great Councils held at it in the *Saxon* Times, tho' it be certainly now reduced to a small Hamlet of half a score Houses. Now I will leave it to your self to judge, whether the Sheriff would have pitch'd upon so small and inconsiderable a Place as this to make a Borough of, had it never sent any Burgesses to Parliament before that Time. And I doubt not, but those Gentlemen that know the rest of the smaller Towns Mr. *Pryn* has there mentioned with *Gatton*, could say as much for their Antiquity as Boroughs, if you please to enquire about them.

But I have held you too long upon this Point, and therefore shall proceed to those Two that remain, *viz.* The Ambition of neighbouring Gentlemen to make as many Boroughs as they could, that they might be chosen at them; and the Desire of such Towns to be made Boroughs, to receive the Advantages of the Money spent among them at such Elections. The first of these, in the Times we are now speaking of, could be no Cause of their sending Members to Parliament: Since it is certain, that before the Reign of *Henry VIII.* none were elected for any City or Town, but Persons free of, or actually resident in such Cities and Boroughs; as appears by the Statute of the First of *Henry V.* which does but recite and confirm this ancient Custom. So that this Trick of chusing Members for Beef and Ale has been introduced but of late Times, *viz.* since the Reign of *Henry VIII.* when Gentlemen began first to be chosen for Cities and Boroughs: And if that is so, the last Cause falls of it self, *viz.* The Desire of such small Towns to elect; since if they could get nothing, but rather lose by their sending Burgesses to Parliament, and paying them their Wages (as they must do as long as they chuse from among themselves) it is unreasonable to believe, that they ever should desire this as a Privilege; and therefore it is only since the Neglect of this good old Law for Wages, that so many Boroughs (which Mr. *Pryn* here mentions to have had Precepts again sent them of late Years to elect Members after some Age's Intermission) desired to have this Privilege renewed to them, as was done in the Case of those Boroughs he here mentions; which yet certainly had been very gross, and contrary to all common Right, if the House of Commons had not then believed those Boroughs to have had higher Right by Prescription than the Sheriffs Precepts gave them. As for the last Rank, *viz.* those Boroughs created by the Writs or Charters of our Kings, I need say but little, since this Author here grants such Creations to have been good before the Statute of the 5th of *Richard II.* but not since; tho' I cannot see any Reason for it why he should give

Ibid. p. 227

Ibid. p. 237

the Sheriffs such Power of making new Boroughs after this Statute, in the Time of *Henry VI.* as he does in the Case of *Gatton*, and those other Boroughs he there mentions with it; and yet deny this King the like Prerogative. And I find no such Grant till the Reign of *Edward VI.* But yet for all this, as I will not say there were none; so are there but very few Examples of Charters, that confer upon any City or Borough, a Power to send Members to Parliament, who had it not before by Prescription; tho' I grant that Privilege may be mentioned in the Charter, and so put it in the Power of the Mayor and Aldermen to elect for the future; when it was the whole Populace, or all the Inhabitants of that Town that were to elect before: Of which I could give several Instances, were I not streightned in Point of Time.

But to shew you from the very Statutes themselves that Mr. *Pryn* has here cited, that the Right of the Cities and Boroughs to appear in Parliament, was not anciently looked upon to have had no other Original than the Favour of the Sheriffs; pray read these Clauses of the Statutes he has here quoted: The first is that memorable Statute of the 5th of *Richard II.* 2 *Parl.* c. 5. (now mentioned, and which *1b. p. 240, 241,* I have already cited) which expressly enacts, "That all and singular Persons and Commonalties which from henceforth shall for Time to come have Summons of Parliament, shall come from henceforth as before to Parliaments, in the Manner as they be bound to do, and hath been accustomed within the Realm of *England* of old Time. And whatever Person of the said Realm, which from henceforth shall have the said Summons (be he Archbishop, Bishop, Abbot, Prior, Duke, Earl, Baron, Banneret, Knight of Shire, Citizen of City, Burgess of Burgh, or other singular Person or Commonalty) do absent himself, and come not at the said Summons, (except he may reasonably and lawfully excuse himself to our Sovereign Lord the King) he shall be amerced, and otherwise punished, according as of old Times hath been used to be done within the said Realm in the said Case. And if any Sheriff of the Realm be henceforth negligent in making his Returns of the Writs of the Parliaments, or that he shall leave out of the said Returns any Cities or Boroughs which he bound, and of old Times were wont to come to Parliament, he shall be punished in the Manner as was accustomed to be done in the said Case of old Time, in the French (*d' Antiente*.) From which Statute we may draw these Conclusions: First, That the Knights, Citizens and Burgesses, are supposed by this Statute to have a like Right to have Summons to Parliaments as hath been accustomed of old Time, as well as the Lords Spiritual and Temporal here mentioned. Secondly, That by these Words, have been accustomed of old Time (or *d' Antiente*, as it is in the French Record) we are to understand a general Custom of the Realm, Time out of Mind, that is, by Prescription: So that if the Bishops, Abbots, and Temporal Lords, are here acknowledged to have had a Right to sit in Parliament by Prescription; so have the Commons likewise by the same Words equally applied to all the Orders here mentioned. Lastly, That if any Sheriff shall neglect in making Returns of any such Cities and Boroughs, which were thus bound to come to Parliament of Old Time, he shall be punished, as hath been accustomed to be done in all Time past (or *d' Antiente*.) Now pray tell me with what Colour of Justice, the Sheriffs could be thus punish'd, if there had been no certain Rule to know what Cities and Boroughs were bound to come to Parliament of Old Time, but it had been wholly left at the Sheriff's Discretion which they should summons, and which they should omit? Let us next compare this with the Statute of the 23d of *Henry VI.* c. 15. (which Mr. *Pryn* has here also given us) reciting, "That divers Sheriffs of Counties have sometimes returned none of the Knights, Citizens and Burgesses lawfully chosen to come to the Parliaments; but such Knights, Citizens and Burgesses have been returned, which were never duly chosen, and other Citizens and Burgesses than those which by the Mayor and Bailiffs were to the said Sheriffs returned, and moreover by no Precepts to the Mayors and Bailiffs, or to the Bailliff or Bailiffs, where no Mayor is, for the Electing of Citizens and Burgesses to come to the Parliament; and then appoints the Penalties for the said Abuses and Neglects. Now pray tell me, whether this bare Abuse of the Sheriffs, and Neglect of the Duty of their Office, here condemned by this Statute (and for which the Statute of *Richard II.* declares them punishable at Common Law, as this Act makes them liable to it by Statute-Law) could give them such an Arbitrary Power, as this Author fancies; much less can serve to corroborate "his Opinion (as he here "supposes

“supposes it does) concerning the true Original, Continuance, Discontinuance, Reviving and Antiquating Parliamentary Cities and Boroughs, not by Charters, and Patents from the King, or Prescription Time out of Mind, but by the Sheriff’s Power and Arbitrary Returns, by the forecited general Clauses in their Writs?

But since I confess I have dwelt too long on my Answer to Mr. Pryn’s Arguments, I shall conclude with only giving you one Record, which I hope will sufficiently satisfy you, that not only St. Albans, but several other ancient Boroughs claimed to send Burgesses to Parliament by Prescription: Which appears by a Writ or Commission from the King, reciting a Petition of the Town of *Barnstaple* to King *Edward III.* and his Council in Parliament, which is also to be found in the Patent-Rolls of the 17th of this King, setting forth, That the said Town hath been a Free Borough *à tempore cujus contrarij memoria non existit*; and as such, enjoyed divers Liberties, and Free-Customs, by a Charter of King *Athelstan*: And this among others, *ac quod ad singula Parliamenta nostra, & dictorum Antecessorum nostrorum*, (among which the said King *Athelstan* must certainly be reckoned for one) *duos Burgenses pro Communitate ejusdem Burgi mittere solebant*; and therefore that Charter being lost, they desire a Confirmation of it from the King. Whereupon he by this Commission directs a Writ of Enquiry to several Gentlemen and others therein mentioned, to enquire if the said Burgesses had enjoyed all those Liberties so granted by the said Charter of King *Athelstan*, or not. Which would have been ridiculous, if the King and Council had been satisfied that no Cities and Boroughs sent any Members to Parliament under the *Saxon* Kings, or at least before the 49th of *Henry III.* And this Authority is the more remarkable, because *Barnstaple* is one of Mr. Pryn’s modern Boroughs, for which he can find no Precepts or Returns earlier than the 26th of *Edward III.* tho’, no doubt, as appears by this their Petition, in the 17th of this King, it had sent Burgesses to Parliament many Ages before, tho’ the Precepts and Returns upon them be all lost.

Part 1. m. 22. d. 10.

And that not only the Cities and Boroughs do thus claim by Prescription, but that the Knights of Shires have always claimed the same Privilege, may appear by another Petition of the Commons House, extant on the Parliament-Rolls of the 51st of *Edward III.* which I shall contract and put into *English* out of *French*, reciting thus, “Because of Common Right (in the Roll *de Commune droit*) of the Realm, there are, and shall be elected Two from every County of *England* to come to Parliament for the *Commune* of the said Counties: And also the Prelates, Dukes, Barons, Counts Barons, and such as hold by Barony, which are, and shall be summoned by Writs to come to Parliament, except the Cities and Boroughs who ought to elect from among themselves such as ought to answer for them.

M. 5. n. 45.

Whence we may conclude, that the Commons then claimed to come to Parliament of Common Right, (that is, by Common Law, or general Custom of the Realm, Time out of Mind) as much as the Bishops, Abbots and great Lords. 2. That neither the Bishops, Lords, nor Tenants *in Capite*, had any Authority to impose Taxes, or make Laws for the Commons of the Counties, or these for the Cities and Boroughs, without their Consents; because they had each of them Representatives of their own Order to answer for them in Parliament.

M. I must confess this would have been absolutely convincing, could we have seen this Charter of King *Athelstan*’s; but since the Towns-men of *Barnstaple* do only in their Petition (among others) set forth this Privilege of sending Burgesses to Parliament; now who can tell whether there were any such Thing in their Charter or not; since they confess they had lost it? Or granting it was as they set forth, yet this will sufficiently evince, that the Right of Cities and Boroughs to send their Representatives to Parliaments, was not, as you suppose, as ancient as the Government, but had its Original from the Grants and Charters of former Kings.

F. As to these Objections, we can have but all the Proof that this Subject is capable of at such a Distance of Time: But if I were a Jury-Man in this Matter, I should rather believe that the Town of *Barnstaple* had such Charter not long before they made this Petition to King *Edward III.* and that there was such Clause therein as they here set forth; than that these Towns-men should be so impudent as to desire a new Charter of Confirmation from him of all their Privileges (of which this of electing Burgesses was one) if there had never been any such Clause in it at all. But as for the other Objection, That if it were so, then it appears that all the Right of Cities and Boroughs sending Members to Parliament, is derived from the Grants and Charters of former Kings; it is very fallacious; as you will

find if you confider and compare the ancient Right of the Bifhops and Abbots, as alfo of all the Temporal Nobility, to come to the great Council of the Kingdom. Which, as to the firft of them, I proved to be as ancient as Chriftianity it felf, among the *Engliſh Saxons*: And as for the Prieſthood and Nobility in general, to have been as old as the Inſtitution of the Government it felf. Now, though you grant that long before the Conqueſt our Kings had the Nomination of Bifhops and Abbots, and alfo the making of Aldermen, Earls, and *Thanes*, who made the Temporal Nobility in thoſe great Councils; will it therefore follow, That becauſe our Kings were thus entrusted by the People with this Prerogative of naming and inveſting Bifhops and Abbots *per Annulum & Baculum*, and alfo of creating thoſe great Men now mentioned; that therefore all the Right either Order had to appear at thoſe Councils, not only proceeded from, but depended wholly on the King's good Will and Pleaſure; and that he could have choſen whether he would have named any Bifhops or Abbots to vacant Sees and Abbeys, or made any Aldermen, Earls, and *Thanes*, or not; but have changed the whole Frame of the Government into an Abſolute Deſpotick Monarchy, by deſtroying or omitting the Members of the great Council of the Kingdom; whether you believe the Clergy, Nobility, and People would have ſuffered any of thoſe Kings to have made ſuch an Innovation? Apply this to the Right of moſt of the ancient Cities and Boroughs in *England*, and ſee if it do not exactly agree with this parallel Caſe of the Bifhops, Abbots, and Temporal Nobility; ſince as there were Prieſts and Nobles, who from the very firſt Inſtitution of our great Councils did not owe their Original to the King, but brought it with them out of *Germany*, and to whoſe Suffrages the firſt *Saxon* Kings owed their Elections; ſo no doubt were there divers Cities and Towns in *England* ſo conſiderable from the Time of the Expulſion of the *Britons*, that it was thought fit to pitch upon them as moſt able to ſend Representatives to the great Councils of the Nation, that ſo they might imitate their old Government in their own Countrey, in which the great Cities and Towns had always a conſiderable Share, as they have in the *German* Diets to this Day; tho' the King might then (as he is now) be entrusted with the Prerogative of making new Cities and Boroughs with like Privilege with the old ones; tho' this was but rarely practiſed till the Reign of *James I.* The Two Universities being ſome of the firſt Corporations on which he conſerr'd this Privilege by Charter of electing and ſending Burgeſſes to Parliament; which Power has, I confeſs, been exerciſed even to a Grievance in the Reigns of his Son, and Grandſons; ſo that it were to be wiſh'd, that there was a Law paſſed, that no new City or Borough ſhould be made for the future without an expreſs Act of Parliament.

Now I would very gladly hear what you can farther ſay to ſo many weighty Authorities, which I have now given you; for evident it is, that if they are compared and conſidered in Series of Time, that neither *Edward II*d or *III*d, nor their Judges or learned Councils, no nor the Parliaments of their, and ſucceeding Times, had ever heard any Thing of *Dr. Brady's Annus Mirabilis*, or 49th of *Henry III.* which was but 43 Years before the Reign of *Edward II.* his Grand-child, and little above 60 Years before that of *Edward* his great Grandſon.

B. A. P. p. 13. *M.* Well notwithstanding all this, whoſoever will reflect upon what the Doctor hath writ, may ſuſpect that the Judges (nay Parliaments) were very ignorant in the Hiſtory of this Nation, or that they ſpoke out of Deſign. And it is a great Argument that the Lawyers ſtudied and knew only Popular and Lucrative Law, and not the Conſtitutions of the Nation before their own Time. And tho' I muſt confeſs what you have now ſaid may ſeem to me to carry ſome weight with it; yet ſince I do not eaſily change my Opinion, upon the firſt hearing of a new Argument or Authority, give me leave better to conſider what you have ſaid. But in the mean Time, ſince you have now mentioned the *German* Diets, pray Sir, before we leave off, ſhew me what you undertook to prove at the firſt Entrance on this Subject; *viz.* That in all the great Councils, or Aſſemblies of States in *Europe*, which are derived from the *Germans* and *Goths*, there are found Representatives for the Plebeians or Commons, diſtinct from the Clergy, and greater and leſſer Nobility.

F. I readily agree to your Deſires, but ſince my own Notes concerning this Matter are very long, and that I have them not about me; Pray give me leave to make uſe of the Authority of *Dr. Heylin*, an Author you have no Reaſon to look upon as partial, ſince he was not only remarkable for his great Skill in Hiſtory, but alſo as being a great Friend and Diſciple to *Sir Robert Filmer* in Politicks, was a vehement Aſſertor of Abſolute Monarchy, and an utter Enemy to the Power of Parliaments;

liaments; yet this very Person in his Treatise called, *The Stumbling of Disobedience and Rebellion*, &c. printed 1658. in his 5th Chapter (I have already quoted for the Inferior Clergy being anciently a Part of the great Council or Parliament of the Kingdom) proves the Uniformity of the Three Estates to have been the same in all the Christian Kingdoms on this side of *Europe*. He runs through them all, beginning with *Germany*, which I shall contract, because he there says a great many other Things not so material to our present Purpose.

And first, beginning (as of right) with the *German Empire*, *Thuanus* gives this Note in general, *Imperium in tria omnino membra dividitur*, that the Empire is divided into *Three Estates*, over all which the Emperor is the Head or Supreme Prince. Of these the first Estate is *ex sacro Ordine*, of the holy *Hierarchy*, composed of the three *Spiritual Electors*, together with the Residue of the Archbishops and Bishops, and many Abbots, Priors, and other Prelates. The second is of the Nobility, consisting of *Three Temporal Electors*, the Dukes, Marquesses, Lantgraves, Burgraves, Earls, and Barons, of which there is no determinate Number; the Emperor having Power to add daily to them, as he sees Occasion. The *Third Estate* is of the free or *Imperial Cities*, in Number Sixty, or thereabouts, who represent themselves at the General *Diets*, by such Commissioners or Deputies as are authorized to that Purpose.

August. Thuar. Hist. lib. 2.

Next pass we over into *France*, and there we find the Subjects marshalled into *Three Estates*, whereof the *Clergy* is the first. *Rex coactis tribus Ordinibus, Sacerdotio, Nobilitate, Plebe, subsidia rei pecuniarie petit.* So *Paulus Æmilius* doth inform us. Out of these *Three* are chosen certain Delegates or Commissioners, some for each *Estate*, as often as the King's Occasions do require their Meeting; the Time and Place whereof is absolutely left unto his Disposing: And these thus met do make up the *Convencus Ordinum*, or *L'Assemblée des Estats*, as the *Frenchmen* call it, in Form much like the *English Parliament*: [And of the Meeting of these *Three Estates*, not only this *Author*, but all the other *French Historians*; and in particular *Phil. de Commynes* make frequent mention.]

Pass we next over the *Pyrenees*, to the Realms of *Spain*, and we shall find in each the same *Three Estates*, whose Meeting they call there by the Name of *Curia*, (in *Spanish* the *Cortuz*) or chief Court, *κατ' ἐξουσίαν*, by Way of Eminency; consisting of the *Clergy*, the *Nobility*, and the *Commissioners* of the Provinces, and most Ancient Cities. For Proof of which, we need but look into the *General History of Spain*, translated out of *French* by *Grimston*, and we shall find a Court of Parliament for the Realm of *Aragon*, consisting of the *Bishops, Nobles, and Deputies of Towns and Commonalties*, having Place in the said *Estates*, convened by King *James* at *Saragossa*, Anno 1225, for settling the Succession, and declaring the Right Heir. Also for *Castile*, we find a *Parliament of Lords, Prelates, and Deputies of Towns* summoned at *Toledo* by *Alfonso* the Noble, Anno 1210. upon Occasion of an Invasion made by the *Moors*: Another before that at *Burgos*, under the same King, Anno 1179, for levying of Money on the People to maintain the Wars. Also that great Convention of the States held at *Toledo* by *Ferdinand* the Catholick, 1479, for swearing to the Succession of his Son *Don John*; in which the Prelates, the Nobility, and almost all the Towns and Cities which sent Commissioners to the Assembly, are expressly named. Thus do we also find a Meeting of the *Deputies of the Three Estates of Navarre* at the Town of *Tafalla*, Anno 1481, for preserving the Kingdom in Obedience to King *Francis Phœbus*, being then a *Minor*, under Age: And for *Portugal*, that the *Deputies of the Clergy, Nobility, Provinces and good Towns of Portugal*, assembled at *Tomara*, Anno 1581, to acknowledge *Philip* the 11d for their King, and to settle the Government of that Kingdom for the Times to come.

Bedin. de Re-pub. lib. 3.

Gen. Hist. of Spain, l. 14.

Id. lib. 15.

Id. lib.

Id. lib. 22.

Id. lib. 30.

Now let us take a View of the *Northern Kingdoms*, and still we find the People ranked in the self same Manner; and their great Councils to consist of the *Clergy*, the *Nobility*, and certain *Deputies*, sent from the Provinces and Cities, as in those before. In *Hungary*, before that Realm received the Gospel, we read of none but *Nobiles & Plebei*, the Nobility and Common People, who did concur to the Election of their Kings; but no sooner was the Faith of *Christ* admitted, and a *Clergy* instituted, but instantly we find a *Third Estate*, *Episcopus & Sacerdotum Collegia*, Bishops and others of the *Clergy* superadded to them, for the Election of the Kings, and the Dispatch of other Business, which concerned the Publick, as it continueth to this Day. In *Denmark* we shall find the same, if we mark it well.

Boetius in Hist. Hun. Decad. 1.

Id. ibid. Decad. 2. l. 2.

Id. Decad. 2. For l. 3.

Pont in. in Do-
rice de oipt. Id.
in hiftor. Re-
rum Danic. l. 7.

Id. lib. 131.

For though *Pontanus* seem to count upon *Five Estates*, making the Regal Family to be the first, and subdividing the Commons into Two; whereof the Yeomanry makes one, and the Tradesman or Citizen the other: Yet in the Body of the History we find only *Three*, which are the *Bishops*, the *Nobility*, and *Civitatum Delegati*, the Deputies or Commissioners of Towns and Cities. For *Sweden*, it comes near the Government and Forms of *Denmark*, and hath the same *Estates* and Degrees of People, as amongst the *Danes*; that is to say, *Proceres & Nobiles*, the greater and the less Nobility; *Episcopi & Ecclesiastici*, the Bishops and Inferior Clergy; *Civitates & Universitates*, the Cities and Towns Corporate, (for so I think he means by *Universitates*.) as *Thuanus* mustreth them. [To which we may also add (tho' here omitted by this Author) the Delegates of the Rusticks or Husbandmen, who make a Fourth Estate in the Assembly of Estates in this Kingdom.] Where the Bishops and Clergy enjoy the Place and Privileges of the Third Estate (notwithstanding the Alteration of Religion) to this very Day; the Bishops in their own Persons, and a certain Number of the Clergy out of every *Sochen*, (a Division like our *Rural Deanries*.) in the Name of the rest, having a necessary Vote in all their Parliaments. [And this *Swedish* great Council is the more remarkable, because it comes very near our Constitution in *England*, in which I proved the Inferior Clergy, and the Commons (not excepting the meanest Freeholders) anciently had their Representatives.

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So that it had been the strangest Thing that could have been observed in all the Political Constitutions on this Side of *Europe*, if that of *England*, tho' descended from the same *Gothick* Original, and founded according to the same Model, should have had no Representatives for the Commons or Plebeians in their great Councils, or Parliaments. Dr. *Heylin* here concludes with *Scotland* and *England*; the former of which, since you agree to have had from all Times, Citizens and Burgesses in their great Councils or Parliaments, I need not repeat what is there said, since it is no more than what you your self have granted; and as for *England*, he owns, (as appears by the Passages I have already cited out of this Chapter,) that the Clergy, Nobility, and People were called to a Parliament held under *Henry II.* at *Clerkenwell*.

B. A. P. p. 96.

Vid. Recolatus
Dijcoursus Polit.
p. 126.

M. I will not deny, but there were Representatives of the Cities and great Towns, in the great Councils or Assembly of Estates of all those Kingdoms you have now mentioned out of Dr. *Heylins* Treatise; yet whether they were there from the very first Institution of those Governments is much to be doubted. But since I have not now Leisure to enquire into the Original of all these Kingdoms; nor at what Time each State began to come to these great Councils; give me leave in the mean Time to remark, That all these Kingdoms (except *Sweden*) came nearer to that Constitution which we suppose to have been anciently in *England* and *Scotland*, and also other Kingdoms where Feudatory Tenures were observed, and consequently none but the Chief Lords or Barons by Knights Service, and that held of the King; so that all those Foreign Councils, or Dyets, &c. at first were all the same, as consisting of Emperors or Kings with their Earls and Barons, Bishops, and great Officers; as is evident from all the old German and French Authors. And since Cities sent Deputies in *Germany* and *Italy*, they were only from Imperial Cities; the like I believe would be found in *France*, and those other Kingdoms you have now mentioned; but you cannot shew me, (unless in *Sweden*) any Representatives elected by the Common People, or Rusticks, distinct from the Nobility and Gentry; like our Knights of Shires in *England*. So that I still doubt, whether all the Representatives of the great Lords, and other Nobility that appeared in the Councils of these Kingdoms were not all Tenants in Capite, and no other.

F. That this is a meer Surmise of yours, I think I can easily prove; for in the first Place, as for the Bishops, Abbots, and Clergy, who still made the first Estates in all these Kingdoms; nothing is more certain, than that they never any of them held of the King by Knight's Service, and therefore could not sit in their great Councils by that Tenure; that Institution being for ought as I know, peculiar to *England*, and introduced by your Conqueror, as you your self acknowledge. And as for the Temporal Nobility, you will find, that in *France*, not only those Noblemen that held of the King by Military Service, but those who held in *libero Alodio*, without any such Service at all, had Places, either by themselves or their Deputies, in the Assembly of the Estates. So likewise for the Cities

Cities and Towns that sent Deputies to it, I believe you will not find that any of them held of the King *in Capite*. And to come to *Germany*; you are likewise as much mistaken, in fancying that all the Imperial Cities were subject immediately to the Emperor before they became so. For *Hamburg* and *Lubeck* were once subject to their own Princes; the former to the Duke of *Holstein* and *Sleswick*, and the latter to Earls of its own; till at last they either purchased their Liberties they enjoy from their Princes, or else cast them off, and were after received into the Body of the Diet by the Bulls or Charters of several Emperors. And so likewise *Brunswick* was always a free City, till it was united to the Empire by its own Consent. I could shew you the like of several other Cities, now called Imperial, who held anciently not of the Emperor, but either of their own Earls, or Bishops; though I grant it was the Charters of the Emperor with the Consent of the Diet, that gave them a Place in those Assemblies. And though it is true, that in all the rest of these Kingdoms, the meer Rusticks or Peasants have no Representatives in their great Councils; yet this makes no Alteration in the Case, if you please to consider it; for the Nobility and Gentry are the only true and proper Owners of the Lands of those Kingdoms; all the Rusticks or Peasants being meer Vassals, and in *France* almost Slaves to their Nobility and Gentry, who (as I have already said) had all alike Votes in their Assembly of Estates, as well those who held of the King in Chief by Knights Service, as those that did not. Whereas it was always far otherwise in *England*, where the meanest Freeholder was always as free as to his Person and Estate, as the greatest Lord of whom he held. And hence it is, that we have had from all Times those of the Degree of Yeomen, so peculiar to *England*, as *Fortescue* in his Treatise *de Laudibus Legum Angliæ* takes Notice, who if they lived on their own Lands, had no more Dependence on the Noblemen and Gentlemen, than they have now; and therefore it was but Reason, that these should have their Representatives in Parliament, as well as the Inhabitants of the Cities and Boroughs, who had most of them a far less Share in the Riches and real Estates of the Kingdom. Secondly, Pray take Notice, that in the rest of the Kingdoms of *Europe*, except *England* and *Scotland*, there was no Difference in Point of Privileges as to being Taxed, or having Voices in the great Council of the Kingdom, between the higher Nobility, such as had the Titles of Dukes, Marquesses, and Counts; and simple Gentlemen. Whereas in *England* it has been always otherwise (at least since the Conquest); and the Earls, and Barons had by their Tenures, Places as Lords or Peers in the great Council of the Kingdom, and so made a distinct Body from the rest of the People; whereas in other Countries, the higher Nobility and Gentry are reckon'd as all one Estate; and therefore it was but Reason, that the rest of the Inferior Nobility or Gentry, should have their Representatives in this great Council, or Parliament, or otherwise they would have been as very Vassals as to their Estates, to the great Barons and Tenants *in Capite*, as the Boors in *Germany*, or the Peasants in *France* were to their Lords, by whom they were taxed at their Pleasures; which they never were in *England*, as we can find either from History or Records. So that though I grant that it is the municipal Laws of each Kingdom or Nation, that must determine what are the governing Part of the People in those Countries; yet though that was not absolutely the same in all of them as it is in *England*, yet we find it so in the main; and the Representatives of the Cities and Towns do sufficiently assert the Right of the Plebeians or Common People, who make the Third Estate in those great Councils. But I must here except *Sweden*, in which it is certain, that the meer Rusticks or Boors had always their own Deputies in their Diets, as well as the Cities and Towns; and if *Sweden* had this Privilege, I cannot see why the *English* Gentry and Yeomanry (who with us make but one Body of Commons) might not have had the like, till you can shew me more sufficient Proofs to the contrary.

Wid. 7. Angl.
Wendenagen
de Rebus Han-
jeaticis, Cap.
2. p. 30.

M. Well, Sir, I shall consider of what you say. But since it grows late, that we may wind up this Conversation as fast as we can, give me leave to tell you, that though I should admit all that you have hitherto averred for Truth, and that we should grant the Commons of *England* to have been as Ancient a Part of the great Council, or Parliaments, as any of the other Two: What is that to the main Point in Question between us, *viz.* that of Non-resistance of the King upon any Account whatsoever? Or how can you justify those of the Clergy, Nobility, and Gentry of the Church of *England*, for taking up Arms against the present King, and contributing

tributing so much as they have done to the driving him away, and in bringing Things to this Confusion they are now in? Since, let your Constitution of Great Councils and Parliaments be never so Ancient, let us also for once suppose them (as you do) to have a Share in the Legislative Power of the Nation, yet how can this Authorize them (much less any private Persons out of Parliament) to take up Arms against the King, or those Commissioned by him? Since the whole Current, both of Common as well as Statute-Law runs directly against you; and all with one Consent assert, That the Disposál of the *Militia*, or Military Force of the Kingdom, has been even so absolutely in the King's Power, and at his Disposál, that no Man can without being guilty of Treason, take up Arms (whether offensive or defensive) without his Commission to authorize him to do it. So that no Government in the World is more averse to all forcible Resistance than our own; the King having been even from your Time beyond Memory so fully possess'd of the whole *Militia*, or Power of raising offensive or defensive Arms in this Kingdom, that it is expressly forbidden by the Statute of the 7th of *Edward I.* against coming to Parliaments and Treaties with Force of Arms; in which the King sets forth, *That in the last Parliament, the Prelates, Earls, Barons, and the Commonalty, (in Latin Communitas, or Body of the Realm) have said, that to us (i. e. to the King) it belongeth, and our part it is through our Royal Seignury, to defend (that is, in old French, to forbid) Force of Armour, and all other Force against our Peace, at all Times when it shall please us, and to punish them according to our Laws and Usages of our Realm; and hereunto they are bound to Aid us as their Sovereign Lord, as oft as need shall be.* From whence you may observe, that it is the King's Prerogative to forbid all manner of Arms, or Armed Force within the Realm; so that no Man can lawfully Arm himself without his Authority. And this is further confirm'd by the Statute of 25 *Edward III.* concerning Treasons; wherein it is declared, (without any excepted Cases to the contrary) *That to levy War against our Lord the King in this Realm, or to be adherent to the King's Enemies in his Realm, giving them Aid or Comfort in the Realm, or elsewhere, is Treason.* And Sir Edward Coke upon this Statute saith thus, *That this was High Treason before by the Common Law; for no Subject can Levy War within the Realm, without Authority from the King; and if any Man Levy War to expulse Strangers, to deliver Men out of Prisons, to remove wicked Counsellors, or against any Statute, or to any other End, pretending Reformation, on their own Heads, without Warrant, this is Levying of War against the King, because they take upon them Royal Authority.* From which Statute, as also from your own Oracle's, (Sir Edward Coke's) Interpretation of it, you may observe that it was not only Treason to make War against the King's Person, but to take Arms to make any Reformation or Alteration in Church or State, without the King's Authority. Nor can any Subject of *England* justify the taking Arms upon any Account whatsoever, unless it be by the King's Commission. And therefore all the Judges of *England*, in the Case of Dr. *Story*, who was Executed for Treason in the Reign of Queen *Elizabeth*, did with one Consent agree, that the very Consultation concerning making War against the Queen, shall be interpreted a making War against her Person, and supposes a Design against her Life. So that nothing seems plainer to me, than that by the Ancient as well as Modern Laws of *England*, all defensive as well as offensive Arms, are expressly forbidden and condemned.

Vide Dyer's
Reports.

F. I think I shall be able to make out, notwithstanding what you have now said, That all Resistance of the King, or those Commissioned by him, is so far from being Treason, as you suppose, that it is every Man's Duty to oppose him, in Case he goes about to set up, instead of a Legal Monarchy, a Tyrannical Arbitrary Power in this Nation, since this is but to preserve the Original Constitution of Parliaments, which in some Cases cannot be maintained without such a Resistance be allowed. But to proceed to the Authorities you bring from our Statutes; As for the first you urge, from that 7th of *Edward I.* I think that can by no means do the Business for which you design it; for in the first Place, this is only a Declaration of the Bishops, Lords and Commons of the Land, that it belongs to the King to defend (*i. e.* forbid) all Force of Arms: But mark, Sir, what Force: Sure it is only meant of such Force as belongs to the King's Prerogative to forbid; *viz.* Force of Arms against the Publick Peace, and such as he might punish according to the Laws and Usages of the Realm; and therefore the Statute expressly declares, that (as Subjects) they are hereunto bound to Aid him their Sovereign Lord the King at all Times, when Need shall be; but does this Act any where say, that

he

he hath an irresistible Power to disturb this Peace by his own private Illegal Commissions, or that any Men are bound to assist him in it ; or because (for Example) he hath Authority to punish all Men according to Law that shall come to Parliaments with Force of Arms, that therefore he hath an unlimited Power of raising what Forces he would, and imprisoning or destroying the whole Parliament if he pleased, and that no body might resist him, if he had gone about so to do. The like may be said, if the King should notoriously and insupportably by Force invade all the Civil Liberties and Properties of his Subjects, by levying Taxes, or taking away their Estates by downright Force, contrary to Law. Now can any body in his Senses believe that the Act of 25th of *Edward III.* was made to prevent all Resistance of such Tyrannical Violence, and that the Resistance of those Forces (whether Foreign or Domestick) that might be sent by the King's private Commission to murder or enslave us, is making War against his Person, or that it comes within any of the Cases expressed in that Statute? And therefore cannot fall within the Compass of Sir *Edward Coke's* Comment upon this Statute; all the Offences therein specified being Treasons at Common Law before that Statute was made; nor is the Reformation there mentioned, to be understood of a just and necessary Defence of our Lives, Liberties, Religion and Properties, as settled and established by the Laws of the Land, to be looked upon as making War against a weak or seduced King ; but is rather in Defence of him and the Government, by opposing Tyranny, which will certainly bring both him and us to ruin at last ; so the Reformation he there mentions is only to be understood of such Insurrections and Rebellions as have been made under the meer Pretence of Religion, or obtaining greater Liberties for the Common Sort of People than they had by the Law of the Land ; such as were the Rebellions of *Wat Tyler* in King *Richard II.* and *Mortimer's* in *Henry VI's* Reigns ; not to mention the other Rebellions raised by the Papists in the Times of King *Henry VIII.* *Edward VI.* *Q. Elizabeth's* Reigns ; all which being begun by seditious or superstitious Men, were certainly rank Rebellions, and so are and ought to be esteemed by all good Subjects.

M. I grant these Pretences seem very fair and specious ; yet notwithstanding this your pretended Right, or a Necessity of Resistance of the King, or those commissioned by him, in Case of Tyranny, has been still looked upon as Rebellion in all Ages, and the Actors dealt with accordingly wherever they were taken.

F. I do not deny but as long as Arbitrary and Tyrannical Princes could get the better of it, and keep the Power in their own Hands, they still executed for Traytors whosoever opposed or resisted their wicked and unjust Actions, tho' they were never so near Relations to them : Thus both *Edward* and *Richard II.* put their Uncles the Dukes of *Lancaster* and *Gloucester* to death, meerly because they joyned with the rest of the Nobility and People to prevent their Designs. So that it is not the Execution of the Man, but the Cause that makes the Traytor ; since Princes are seldom without a sufficient Number of Judges and Jurymen to condemn whomsoever they please to fall upon.

But that the Clergy, Nobility and People of *England* have always asserted this Right of Self-Defence, in Case their Liberties and Properties were unjustly invaded by the Tyrannical or Arbitrary Practices of the King, or those about him, I think I can prove, by giving you the History of it in so many Kings since your Conquest, as will render it indisputable, if you please now to give me the hearing, or else to defer it till the next Time we meet.

M. I confess I was so weary of sitting up so long at our last Conversation, that I made a Resolution not to do so any more ; and therefore since it grows late, let us leave off now ; and I promise to meet you here again within a Night or Two, and then I will hear how well you can vindicate your Right of Resistance from Law or History. But if you have no better Proofs for it than the Rebellion of the Barons in King *John* and *Henry III's* Reign, you will scarce make me your Convert ; since Impunity does never sanctify a wicked Action, or render it the more lawful ; and you have already given it me for an Axiom, that a *Facto ad Jus non valet consequentia*.

F. I accept of your Appointment with Thanks ; but pray do not forejudge my Arguments till you hear them ; and as for the Axiom, I allow it for good, provided I may urge it in my Turn : But in the mean Time I shall wish you good night.

M. And I the same to you.



Bibliotheca Politica.

DIALOGUE IX.

Whether by the ancient Laws, and Constitutions of this Kingdom, as well as by the Statutes of the 13th and 14th of King Charles the Second, all Resistance of the King, or of those commissioned by him, are expressly forbid, upon any Pretence whatsoever. And also, Whether all those who assisted his late Majesty King WILLIAM, either before, or after his coming over, are guilty of the Breach of this Law.

F.  **S**  IR, I am glad to see you again so soon; for I was just now looking over some of our old Historians, that lie here upon the Table, to rub up my Memory for sufficient Instances and Authorities, that it hath been always the received and constant Custom and Practice of the Clergy, Nobility, and People of this Nation, to defend the ancient Government of this Kingdom by general Councils or Parliaments; as also their just Liberties and Properties, not only by Remonstrances and Petitions, but by Force too, against the King, and those commissioned by him, in case they found them evidently and violently invaded, beyond what any fair or gentle Means, as Petitions and Intercessions, were able to redress. And for Proof of this, I shall go as high as the Times of the Kings of the *West Saxons*, from whom all the Kings of *England* before the Conquest were descended, after the Kingdom of the *West Saxons* had prevailed over all the rest. I shall therefore begin with the Reign of *Sigebert* King of the *West Saxons*, who, as I told you in our 6th Conversation, breaking the Laws and Constitutions of the Kingdom, and tyrannizing over all Sorts of People, was in a General Council of the whole Kingdom deposed, and expelled into the Forest of *Andredswald*, where he was afterwards slain by a Hogherd; as the *Saxon Annals* under the Year 755. as also *Huntingdon*, and *Malmsbury*, relate. I shall not mention the Deposition of King *Edwin*, by the *Mercians* and *Northumbrians*, and their chusing his Brother *Edgar* in his Stead, because not done by the Common Council of the whole Kingdom; and that also for flight and insufficient Grounds.

Therefore since the Times before the Conquest do afford us no more Examples of this kind among the Kings of the *West Saxons* Race; (to which I only confine my self) since those Kings being for the most Part at Wars with the *Danes* to the Time of *Edward* the Confessor, had somewhat else to think on than the making themselves Absolute, or Tyrannizing over their Subjects: But indeed, there is scarce to be found in History a Succession of more mild, just and valiant Princes, than *Egbert* the First King of all *England*, and his Descendants.

M. Pray Sir tell me to what Purpose you cite these Instances of the Nobility and People of *England* deposing and casting off their Kings in the Times before the Conquest; is it that you would justify that Common-wealth Principle, that the Parliament hath the like Power to depose the King at this Day in Case of any

Infringement

Infringement of the Fundamental Laws of the Kingdom, or Breach of the Original Contract (as those of your Party now term it?) If you do, pray speak plain, and then I shall know what Answer to give you.

F. Tho' I assert it, (as undeniable in Matter of Fact,) That the *English-Saxons* did often exercise that Power they had reserved to themselves, of Electing and Deposing their Kings, when they became insupportable for Tyranny or Misgovernment; as appears not only in the Kingdom of the *West-Saxons*, I have now instanced in, but in almost all the other Kingdoms of the Heptarchy; in which there are to be found many more Instances of the Depositions of their Kings, than what were in the *West-Saxon* Kingdom: And this was then very just and necessary, since these Kingdoms were all Elective, and none of them Hereditary; and that the general Meeting of the great Council of the Nation was always at set and constant Times; and did not depend upon the Will and Pleasure of the King, either to call or dissolve them, as I have already proved: And that this Power was no unusual Thing, I appeal to all the Ancient Kingdoms of *Europe*, founded after the same Model as ours, and which I mentioned at our last Meeting; so that nothing is more frequent in their Histories and Annals, than the Deposing of their Kings for the above-mentioned Crimes of Tyranny or Misgovernment. But that some of these *Gothick* Kingdoms, as *Denmark* and *Sweden*, whilst they continued Elective, have exercised this Power even till of late, is so notorious in Matter of Fact, that it needs no Proof, since the Kings of those Kingdoms hold their Crowns at this Day by that Title, and on those Conditions which the Nobility and People gave them, after the Deposition of their Predecessors.

But though this were so anciently also in *England*, it does not therefore follow that it must be so now; for since the Crown of this Kingdom became Hereditary, and that the Calling and Dissolving of great Councils or Parliaments came to depend wholly upon the King's Will, I must allow, that the Case is much altered, and that the Two Houses of Parliament have now no Power to depose the King for any Tyranny or Misgovernment whatsoever. The first Parliament of King *Charles* the Second, in the Act for attainting the Regicides, have actually disclaimed all coercive Power over the King; and yet for all that, the Nobility, and People of *England*, may still have a good and sufficient Right left them of defending their Lives, Religion, and Liberties against the King, or those commissioned by him, in case of a general and universal Breach and Invasion of the Fundamental Laws of the Kingdom, or Original Contract, (if you will call it so), and not to lay down those defensive Arms, till their said just Rights and Liberties are again restored, and sufficiently secured to them. So that though I will not bring the Custom of the *English-Saxons* as a Precedent for the Parliament's Deposing of the King, yet I think I may make use of it thus far, that this Nation has ever exercised this necessary Right of defending their Liberties and Properties, when invaded by the King or his Ministers, either by Colour of Law, or open Force. And that this hath been the constant Practice from almost the Time of your pretended Conquest down to later Ages, I think I can make out from sufficient Authorities, both from Histories and Records.

M. Though your Doctrine is not so bad as I expected, yet it is still bad enough; and I never knew this Right of Resistance carried home, but that it always ended in Deposing and Murdering of the King at the last; as we have seen in our own Times: But let the constant Practice have been as it will, I am sure such Resistance hath been always condemned by our Ancient Common Law, as well as Modern Statutes, as I shall prove farther to you by and by. And therefore pray give me leave to tell you, That the never so constant Practice of an unlawful Thing, can no more justify the doing of it, than that constant Usage, Time out of Mind, for Thieves to rob between *London* and *St. Albans*. Not that I fore-judge you, or refuse to hear any Instances and Authorities from Histories or Records to make good your Assertion.

F. I thank you for your Patience: What therefore if I prove that such Resistance has been not only actually exercised by the Clergy, Nobility and People in former Ages, but that it hath been also allowed by our Kings themselves, and approved of by great Councils, or Parliaments in those Times, for lawful, and the Actors in it wholly indemnified and saved harmless; nay, a Power given them, and that by the King himself, to resist him, and defend themselves, in case he broke his Charters and Agreements made to and with his Nobility and

Paste Paper.
p. 3.

People, or else with some Foreign Prince? Which may appear from this remarkable Instance of King *Henry II.* at the End of whose Reign *Hoveden* in his Annals, gives us the Conditions of the Peace made in the last Year of this King, between him and *Philip* King of *France*, with the Consent of their Bishops, Earls, and Barons; where, among other Articles, you will find this for one, particularly relating to the Barons of *England*, who were also to swear to the Peace, in these Terms; *Et omnes Barones Anglie jurabunt, quod si Rex Anglie noluerit has Conditiones tenere, quod ipsi tenebunt cum Rege Francie, & Comite Richardo, & eos adjuvabunt pro posse contra Regem Anglie, &c.* Whence we may without doubt conclude, that the Resistance of Subjects in some Cases against their Kings, was then allowed of, even by the King himself, and thought not inconsistent with the Allegiance they bore him, though it might suspend it for a Time.

M. I confess, this Instance would be of some Weight, were it not for the Critical Time when this Peace was made; viz. when *Richard* Earl of *Positou*, the King's Eldest Son, had rebelled against his Father, and taken Part with the King of *France*; and had drawn over a great many of the *Norman*, and *Pictavian*, and *English* Barons to his Party; which when King *Henry* perceived, this very Author you have quoted here, tells you, *Quod Rex Anglie in arcto positus Pacem fecit cum Rege Philippo*; that is, was constrained to make Peace with him: So that King *Henry* being in this Streight, the King of *France* and Earl *Richard*, with the Barons of his Party, forced King *Henry* to sign what Conditions they pleased; for there is no such Clause so much as mentioned for the *French* Barons.

But make the most of it, it is but a Temporary Relaxation of Allegiance from King *Henry* to his Barons, and the King might surely thus release them if he pleased: But it is plain, they could not have acted thus, without this Condition had been expressly inserted.

E. Well, supposing King *Henry* to have been never so much constrained to the making of these Conditions; and that it was his own Act that rendred it lawful, it still proves as much as I urge it for; viz. That neither the Kings of *France* or *England* then thought this Resistance absolutely unlawful; for then the King's own Act could never have dispensed with it.

But to shew you farther, that the People of this Nation have ever maintained this Right of Resistance, even without the Allowance of our Kings themselves: And for the doing of this, I shall proceed with the earliest Instances of this Kind after the Conquest; viz. In the Time of King *Richard* the First, during whose Absence in the *Holy Land*, he had committed the Government of his Kingdom to *William* Bishop of *Ely*, who abused his Power by an arbitrary and insolent Carriage; affronting and oppressing *John* Earl of *Merton*, the King's own Brother, and *Jessy* Archbishop of *York*, the King's base Brother; whereupon they rose up against him; and having the Bishops, the Earls and Barons of their Side, appointed the said Bishop a Day, to answer to his Crimes in the King's Court, or great Council of the Bishops, Lords, and Tenants in *Capite*, then called *Curia Regis*; where, when he refused to appear, they all with one Consent came to *London*, and fought with the Followers and Adherents of the said Chancellor by the Way. When they came to Town, Earl *John*, with the Archbishops of *York* and *Reuen*, with all the Earls and Barons, together with the Citizens of *London*, met in *St. Paul's* Church-yard, and there it was proposed, that the said Chancellor should, for his Evil Government, be deposed and banish'd the Kingdom: And so he immediately was, by the general Consent of the Common Council of the Kingdom. So that you see the Nobility Clergy, and People, had then no Notion of an irresistible Power in the King, and those put in Commission by him, when they found their Power to grow Tyrannical and Insupportable.

M. But if I forget not, you omit one material Circumstance in this Affair, which seems to make against you; which is, That the Archbishop of *Reuen*, and *William* the Earl *Mareschal*, did, at that Time, produce the King's Letters, signed with his Seal, wherein he had appointed, that they Two should be associated in the Government with the Bishop of *Ely*, and that he should do nothing without their Privy and Consents, and of those associated with him, in the Business of the Kingdom; and that if he offered to do otherwise, he should be deposed. So that it seems what they now acted, was not so much in Opposition to the King's Commission as to the Bishop's, who had refused to obey his Commands.

E. I con-

*Vi. R. Hoved.
Annal. parte
posterior, 399.*

F. I confess it was as you set forth; yet this makes nothing against my Opinion; since it is apparent that Arms were taken, and this Resistance made by the Major Part of the Bishops, Earls, and Barons, together with the *Londoners*, before ever it was known that such Letters were written by the King. And so it seems they would have done much the same Thing, if there had been no such Letters sent by the King at all. You may also remember, that all these Proceedings also were approved of, and confirmed by the King himself.

But that I may proceed in my History of Non-Resistance, I come to the Reign of King *John* his Brother; who when he had refused the Archbishop of *Canterbury*, and all the Bishops, Earls, and Barons of the Kingdom, to confirm the great Charter of King *Henry* the First, they, together with the rest of the great Men and People of the Kingdom, of all Degrees and Conditions, took up Arms, and made a vast Army, resolving never to lay them down, till he had new granted and confirmed the Charters of Liberties and Forests; till at last the King finding himself almost quite forsaken, so that he had scarce Five Knights left about him, he was at last forced to meet the said Bishops, Earls, Barons, and People, at *Runcmead*, and there to grant them that great Charter, which has been the Subject of so much Discourse between us. So that you see here that the Church of *England* in those Times (if the Bishops and Clergy are the Representatives of this Church) had then no Notion of this Doctrine of Passive Obedience to the King's Absolute Will and Commands.

M. I cannot deny the Matter of Fact to be as you say; but yet you may remember, that the same Author tells us, That the Pope thought the King hardly dealt withal in this Matter; so that he gave Audience to the King's Ambassadors, concerning the Rebellions and Injuries which the Barons of *England* had committed against their King; and that upon a solemn Hearing of the whole Business, and after a Consultation with his Cardinals, he did, as Supreme Lord of *England*, (after King *John's* Resignation of his Crown to him) by his Bull then published, make void the said great Charters of Liberties and Forests; and condemn all the Barons Proceedings, as against their Duty and Allegiance to the King their Sovereign Lord: So that it seems this was not approved of any where but by the Actors. The Pope thereupon excommunicating the Barons, and suspending the Archbishop of *Canterbury* for joining with them.

F. I believe you will make nothing of this Objection: For it appears from the same Author, that the Pope had before this excommunicated the King; and as far as lay in his Power, deprived him of his Kingdom, and absolved all his Subjects of their Allegiance: So that it is plain, it was not out of any true Principle, or Hatred of Rebellion and Resistance in Subjects, that the Pope had thus acted; but purely to gratify the King at this Juncture of Time, and to defend him in his Tyranny, and Breach of his own Charters, because he was then become his Vassal; and so he cared not how much he oppressed his Subjects, because he was thereby the more able to pay him the Tribute he had granted for the Kingdoms of *England* and *Ireland*: And he could also expect the more securely to extort Money from the whole Kingdom. But that this Bull of the Pope's was contrary to the King's own Express Act and Agreement, appears plainly by that Clause which is still to be found in a Charter under the Seal of this King; and which seems to have been the Heads of the great Charter, (according to which it was drawn into the Form we now find it in *Matthew Paris*) in which it is expressly provided, and granted by the said King, That in case he should go about to break or infringe any Clause in the said Charter, and shall not amend it within the Space of Forty Days, that then, *Illi Barones cum Communitatis Terræ distringent & gravabunt nos modis omnibus quibus potuerint, aut (scilicet) per captionem Castrorum, Terrarum, Possessionum, & aliis modis quibus potuerint, donec fuerit emendatum secundum arbitrium eorum, salva persona nostra & Regine nostre, & Liberatorum nostrorum, & cum fuerit emendatum intendent nobis sicut prius fecerunt.* So that you see here in the Judgment even of the King himself, they might freely resist, and take up Arms against him, till he made good every Article of these Charters, if violated; and were not to return to their Obedience till it was amended. And the like Clause, almost Word for Word, is also to be found in the Conclusion of the great Charters, published in *Matthew Paris*.

M. I grant

Mat. Paris.
A. D. 1215.
p. 252. &
dem.

Ibid. p. 165.

Ibid. p. 230.

P. 251.

M. I grant the Clause is there as you quote it; yet I much doubt whether it was of any Validity, being no doubt drawn up by the Barons then in Arms, and which the King durst not at that time refuse, and so he was indeed under a kind of Duress when he did it. And besides, pray mark the Conclusion of this Clause; this Resistance was to be *Salva Persona nostra & Regina nostra, & Liberrum nostrorum, cum fuerit emendatum, intendenti nos sicut prius fecerunt.* Now how this Security here reserved for the King's Person, could consist with that open War the Barons made afterwards against his very Person, and casting off all their Allegiance to their Natural Prince, and calling in Prince Lewis, Son to the King of France, I cannot understand.

F. I think all this may very easily be solved: For in the First Place, King John was no more compelled to agree to this Clause, than he was to the Charters themselves; and if these were lawful and reasonable, so was this Resistance too; since there was no other Way or Means left to preserve them, in case the King should go from his own Acts, and break through all he had done; so that if the Ends were lawful, the Means to preserve it must be so too; or else those Charters would have signified nothing, any longer than the King pleased. As for the other Part of the Objection, that this Resistance was still to be, saving the Person of the King and Queen, &c. and that this did not consist with the Barons after making War against his Person, and casting off all Allegiance to him: It was not their Faults, but the King's, if they could not perform this Agreement; since the King, by making War upon the Clergy, Nobility, and People, by his open and notorious Breach and recalling of these Charters, calling in Strangers to his Assistance, and declaring he would no longer govern according to Law, had made it absolutely unpracticable to preserve their Allegiance to him any longer; so that they never cast off their Duty as Subjects, till he had cast off his Duty as a King; and then what was there else left to be done, but to provide for their own Safety, by calling in a Foreign Prince to their Assistance as soon as they could? Since there was no other way left them to defend themselves against those Troops of Strangers the King had invited over: And though many of them, with their Captain *Hugh de Beves*, had been cast away, and drowned in a Tempest at Sea, yet more were daily expected. So that if Tyrants should suffer nothing for the Breach of their own Charters and Oaths, they would be in a better Condition by their Violation, than the observing of them; for by the making them, they for the present quiet the Minds of their discontented Subjects, and when they please may break them all again, when they have got Power, if no body must presume to resist them, or not think them as much Kings when they destroy and oppress their People, as when they protect and preserve them, by governing according to the Laws of the Kingdom. But pray what have you to say against that general Resistance that was made by almost all the Bishops, Barons, and great Men of *England*, against his Son *Henry* the Third, and about the frequent and notorious Violations of the great Charters which his Father and himself had so often sworn to, and confirmed, and for which he had received such great Benevolences and Subsidies from the Nation?

M. Before I answer this Question, pray take Notice that I am not at all satisfied with your Arguments; That whenever Subjects shall think themselves injured, and oppressed by their Sovereigns, that then they may cast off their Allegiance to them, if they cannot have the Remedy they desire; since this were to make them both Judges and Parties too in their own Cause; which is altogether unjust and unreasonable between private Men, much more between Kings and Subjects. But passing by this at present, I shall tell you my Opinion of this Resistance of *Simon Montfort*, and the Earls, and Barons, his Adherents, that it was downright Rebellion, and tended only to Dethrone the King, and make him a meer Cypher, and to devolve the whole Government upon themselves; as appears by the *Oxford Provisions* recited by so many Authors of that Age; and which were afterwards condemned, (and consequently those violent Means by which they were obtained) by *Lewis* the Ninth, King of *France*; who in an Assembly of his Estates, upon a solemn Hearing of the whole Difference between King *Henry* III. and his Barons, declared these *Oxford Provisions* null and void. So far was this good and pious King from countenancing any Rebellion (or Resistance, as you term it) of Subjects against their Lawful Sovereign.

F. For all this, I cannot find that the King of France did then at all condemn this Defence the ~~Earls~~ and Barons had before made of the Liberties granted them by the great Charters; for though he restored the King to his former Power, by avoiding the *Oxford* Provisions; yet at the same Time when this was done, (as the Continuator of *Mat. Paris* tells us) he expressly excepted the Ancient Charters of King *John*, *Universali* (*scil. Angliæ*) *concesse*, and from which *per illam sententiam in nullo intendebat penitus derogare*; and if he did not in the least intend to derogate from them, he could not with any Justice condemn the only Means the Barons had to maintain them; after so many Trials, and fresh Promises and Oaths of this fickle inconstant King, all broken and laid aside. So that you may as well or better alledge the Pope's shameful Absolution of this King from this Oath he had made to observe the great Charters, as an Argument why they should not be any longer bound by them, nor the Barons obliged to defend them; as this Sentence of the King of France, to render the Resistance the Barons had made in Defence of the great Charters to be unlawful. And that King *Henry* himself did afterwards allow this Resistance for good and lawful, pray see the Agreement which was not long after made in full Parliament, in the 49th, between the King, the Prince, and all the Prelates, Earls and Barons of *England*; whereby he obliged himself to observe all the Articles and Ordinances which had been before agreed upon at *London* in the 48th Year of his Reign. And then follows this Clause in the Record (which the Doctor himself has Printed in his *Appendix* at the End of the First Volume of his Introduction to *English History*) which I shall here translate out of *French*, because it is very old and obscure; it is thus: "And if our Lord the King, or Monsieur *Edward*, (*viz.* the Prince) shall go against the Peace and Ordinance aforesaid; or shall grieve the Earls of *Leicester*, or *Gloucester*, or any of their Party, by Reason of any of the Things aforesaid; that then the great Men, and Commons of the Land, (in *French*, *hauts Hommes, & Commun de la Terre*) shall rise against them to grieve them to the utmost of their Power, and shall be obedient to them in nothing, and in doing all Things as if they were bound to them in nothing, until these Things shall be amended and maintained according to the Ordinance of the Peace aforesaid. And to this our Lord the King, Monsieur *Edward*, and the great Men of the Kingdom, have sworn upon the Holy Gospels, to keep and maintain the Things aforesaid. And with this Record agrees this King's *Latin* Charter, much to the same Purpose recited in the *Annals of Waverly*, Anno 1264, only the Words there are more general, That if the King or Prince should break the said Peace, by hurting or falling upon any of the said Earls of *Leicester*, or *Gloucester*, or any of the Persons above-mentioned, *Liceat omnibus de Regno nostro contra nos insurgere, & ad gravamen nostrum, opem & operam dare juxta posse, ad quod ex presenti precepto nostro omnes & singulos volumus obligari, fideliter & homagio nobis facto non obstante.* So that you see here, that by the Judgment of the King himself, and the whole Parliament, this Resistance might be exercised, notwithstanding the Homage they had done him. And this is that Form of the Peace which I have before cited to you to have been made, (as appears by a Writ to the Sheriff of *Yorkshire*, to be seen upon the same Roll, and in the same Membrane) *unanimes consensu & voluntate nostra, & Edwardi filij nostri Primogeniti, Prelatorum, Comitum, Baronum, & Communitatis Regni nostri, &c.* Which Clause Dr. *Brady* thought fit to conceal, and not Publish with the former Record, because the Word *Communitas* did not at all suit with his Notions in this Place.

M. I must confess this so solemn an Agreement upon the Record would have been very considerable, had it been made whilst the King and Prince had been free, and in their own Power; whereas the Doctor has made it plainly appear, that the King and Prince were at this Time in the Power of *Simon Montfort* and his Adherents, who called that famous Parliament of the 49th, to which we suppose the Commons were first summoned; and therefore the Prince was not delivered at this Time (any more than the King his Father) out of their Power; and was only taken out of *Dover* Castle, and made a Prisoner at large under a Guard (as his Father was) until he made his Escape from his Keepers at *Hereford* Castle. So that I do not at all value this Agreement, because made by Duress; though I confess the Words of the Records are express, that it was *de unanimi consensu & voluntate nostra, &c. Edwardi filij nostri.* But it appears plainly, that by this Agreement

Page 992.

Rot. Pat. 49
H. 3. M. 5.

Page 217.

Rot. Clauj. 49
H. 3. M. 5.

R. A. P. 135.
& dein.

Ibid. 143.

Agreement the King had discharged himself of all Royal Power, and confirmed an Instrument, whereby the whole Government of the Kingdom, and Nomination of all the great Officers of the Crown was put into the Hands of Nine Earls and Barons.

Rot. Pat. 51
H. 3. M. 161.

F. At this rate, no Act that a King can do when he hath the worst of it, though confirm'd by a Solemn Oath (as this was upon the Holy Gospels) can ever be binding; for it is but alledging that it was done by Duress, and it is sufficient to render it null and void. But be it as it will, this was certainly the general Consent, Act and Declaration of the whole Nation assembled in Parliament, and that owned by the King himself, and his Son the Prince, and all his Party. And farther, that this Resistance of the Earl of Gloucester (who was one of these Barons) was not after counted for Treason, or Rebellion, appears by that Pardon of the said Earl which we have before cited "to have been made " by this King, with Assent of the King of *Almaine* (his Brother) and the " Counts and Barons, and Commons of the Land, in which he pardoned the " said Earl, and all his Company, (and also all the *Londoners*) all Rancor " and Ill-will; and in the same manner as the King quits and discharges " the Earl, and his Company, so does the said Earl hereby for himself, and all " his Company, remit to all those that were of the Party of the King, " any Thing done since that Moment (that is, that Civil War, in which the Earl of Gloucester had so great a Share.) So that you see this Resistance of the Earl of Gloucester was within Two Years after the Battel of *Evesham* so far from being looked upon as Rebellion, that the Pardon is made mutual, not only for the Earl, and those that followed him, but also for those that had taken the King's Part.

Vide Mat.
Westminster,
Anno 1301.
p. 436.

But I shall come now to his Son, and Successor, King *Edward* the First; where we shall find this Doctrine of Resistance asserted more than once, not only by private Men, but by the whole Parliament; as appears by those Letters that were written by the King's Command, (or Permission at least, in the 29th of his Reign) in the Name of all the Earls, Barons, & *tota Communitas Angliæ*, to Pope *Boniface* the Eighth, in Vindication of the King's Superiority over *Scotland*; in which you will find this remarkable Passage, *Nec etiam permissimus, nec permittemus, sicut non possumus nec debemus præmissa tam insolita, indebita, & præjudicialia, & alias inaudita, prælibatum Dominum nostrum Regem, etiam si vellet facere, modo quolibet attemptare.* Which Restraining of the King's Will must certainly mean somewhat more than a bare Remonstrance or Declaration against it; since we have seen in our own Times, Kings make nothing of meer verbal Declarations of the Two Houses of Parliament, if they had a mind to do a Thing they thought belonged to their Prerogative, though the Parliament declared against it. And to let you farther see that this Doctrine was at this Time generally believed, and practised all over *Europe*, you will find almost the same Clause in the Letters which were written in the Reign of *Philip* the Fair, King of *France*, Anno 1203, (which falls about the 30th of our King *Edward* the First) and were sent to the same Pope *Boniface*, upon Occasion of the like Usurpations upon the Church of *France*, in the Name of the whole Clergy of that Kingdom; whereby it not only appears that this was done in a general Assembly of Estates, viz. of the Clergy, Barons, &c. & *Communitates Villarum*; but they also there declared, *expressimus, viva voce, Quod si præfatus Dominus Rex (quod absit) tolerare, vel dissimulare vellet, Ipsi (scil. Episcopi, & Barones, &c.) nullatenus sustinerent.* So that here you see not only the Temporal Estates, but the very Clergy declare, that they would by no means suffer the King to act thus (no not) if he would.

Pryn's Second
Vol. of Pap.
Usurpations,
p. 954.

But the Barons and People of *England*, did actually put this Doctrine in Execution, some few Years before this Letter I now mentioned was writ to the Pope; which Transaction I shall give you almost *verbatim* out of *Mat. of Westminster*, and *Henry de Knighton*, in Anno 1297, (being the 26th of *Edward* the First) when the King having extorted a great Sum of Money from the Clergy and People, contrary to Law, and being then going into *Flanders*, he called a Parliament at *Westminster*, where most of the Earls and Barons refused to appear, until such Time as their Petitions for the Ease of their Country were heard; and that the King would again confirm *Magna Charta*. Yet nevertheless the King

King upon Concession of his Male Administration, which he made before all the People, with Tears in his Eyes, and Promise of Amendment, then obtained of the Commons an Aid of the Eighth Penny of their Goods. But as soon as the King was gone over, the Constable and Earl Marechal, with other Earls and Barons, went to the *Exchequer*, and there forbade the Judges to levy the said Tax upon the People by the Sheriffs, because it was done without their Knowledge, without whose Consent no Tax ought to be exacted, or imposed. So that the said Earls and Barons being thus gathered together, and the greater Part of the People joining with them; at last Prince *Edward*, then Lieutenant of the Kingdom, was forced to call a Parliament; to which the Earls and Barons came attended with great Multitudes, both of Horse and Foot, but would not enter the City of *London*, till the Prince had in his Father's Name confirmed the great Charters, and had passed the Statute *de Tallagio non concedendo*; both which were afterwards again confirmed by the King his Father some Time after his Return.

And this will serve to explain the last Article in this Statute, "Which comprehends the King's Pardon or Remission to *Humphrey* Earl of *Hereford* and *Essex*, then Constable, and *Roger Bigot*, Earl of *Norfolk*, Marechal of *England*, (the Two principal Leaders in the late Resistance,) with all other Earls, Barons, Knights, and Esquires, of their Party; all Leagues and Confederacies, as also all Rancor and Ill-will, with all other Transgressions against them, &c. And pray see Sir *Edward Coke*'s Comment on these Words; "If you compare our *English Histories* with this Act of Parliament, the Old Saying shall be verified, *That Records of Parliament are the truest Histories*. The King had conceived a deep Displeasure against the Constable, Marechal, and others of the Nobility, Gentry, and Commons of the Realm, for denying that which he so much desired; yet for that they stood in Defence of their Laws, Liberties, and Free Customs, &c. (I suppose he refers to the Resistance but now mentioned) whereupon he did not only restore the same to them, as aforesaid, but granted special Pardon to those against whom he had conceived so heavy a Displeasure, &c. and such a one as you will scarce read the like. And after a short Gloss upon the Words Rancor and Ill-will, he thus comments on these Words, *etiam transgressiones si quas fecerint*: Here the Words, *si quas fecerint*, were added, lest by Acceptance of a Pardon, they should confess they had transgressed. So careful were the Lords and Commons to preserve their Ancient Laws, Liberties and Customs of their Country. So that it is plain, that Sir *Edward Coke* then thought the Lords and Commons had not transgressed, in thus standing up, though with Force of Arms, for their just Rights and Liberties; and which sufficiently proves that this Author did not conceive such a Resistance to be making War against the King, and so Treason at that Time at Common-Law, and consequently not to be afterwards Treason by the Statute of the 25th of *Edward* the Third (as you would have it); since that Statute does not make any other Overt-Acts to be Treason, but what had been so by Common-Law before this Statute was made.

But in the Reign of this King's Son, *Edward* the Second, there were much more pregnant and fatal Proofs of the Exercise of this Right of Resistance by the Earls, Barons, and People of *England*, against *Pierce Gaveston*; whom having been before for his Misgovernment of the King, banish'd the Realm by Act of Parliament, and coming over with the King's License, but without any Reverse of the said Act; *Thomas* Earl of *Lancaster*, the King's Uncle, with the rest of the Earls, Barons, and Commons of the Land, took up Arms against him. And tho' he raised some Forces by the King's Commission, yet they fought with him, and took him Prisoner, and beheaded him near *Warwick*. Some Years after which, the said *Thomas* Earl of *Lancaster*, with *Humphrey de Bobun*, Earl of *Hereford*, together with divers other Earls and Barons, took Arms, and spoiling the Lands of the Two *Spencers*, Father and Son, came up to *London*, where the King had called a Parliament; in which the King was forced to banish the said *Spencers* out of the Kingdom, though they quickly returned again: Against whom, when the said Earls above-mentioned, and divers other Barons and Knights, again took Arms; but being fail'd by some of their Confederates, were overpowered by the King's Party, and the Earl being taken Prisoner, was Attainted, and Beheaded at *Pontfract*; yet was this Judgment against the Earl, and those of his Party, after-

Rot. Clau. 1
E. 3. P. 2

wards reversed in Parliament, in 1mo. *Edward III.* and their Heirs restored in Blood, as also to the Lands of their Fathers; as besides the Act, it still is to be seen upon the Rolls, appears more plainly by a Writ of this King's reciting; "That whereas at a Parliament at *Westminster*, among other Things, it was agreed by the King, the Prelates, Earls, Barons, and Commons of the Kingdom, that all those who were in the Quarrel with *Thomas Earl of Lancaster*, against the *Spencers*, should have their Lands and Goods restored, because the said Quarrel was found, and adjudged by the King, and the whole Parliament, to be good and just; and that the Judgments given against them were null and void, and therefore commands Restitution of the Lands and Tenements now in the Crown, to the Executors of the said Earl. And the like Writs are found for the other Lords and Gentlemen that had been of his Party.

And further, that not only this Resistance made by this Earl, and the rest of his Followers, but also that which this King himself made together with Queen *Isabel*, his Mother, against the Misgovernment of the King his Father, through the Evil Counsel of the Two *Spencers*, appears by the Act of Indemnity passed in the First Year of this King; in the Preamble of which there is recited a short History of the wicked Government, and Banishment of the *Spencers*, Father and Son; "and also how *Thomas*, late Earl of *Lancaster*, was by their Procurement pursued, taken, executed, disinherited; and how the said *Spencers*, and *Robert Baldock*, and *Edmund*, Earl of *Arundel*, by the Royal Power they had usurped, had caused the King that now is, and the Queen his Mother, to be utterly forsaken of the King his Father, and to be Exiled from the Realm of *England*; and that therefore the King that now is, and the Queen his Mother, being in so great Jeopardy in a strange Country, and seeing the Destructions, and Disinheritings which were notoriously done in *England*, upon Holy Church, the Prelates, Earls, Barons, and the Commonalty of the same, by the said *Spencers*, *Robert Baldock*, and *Edmund* Earl of *Arundel*, by the Encroachment of Royal Power to themselves: And seeing they might not remedy the same, unless they came into *England* with an Army of Men of War, and have by the Grace of God with such Puissance, and the help of the great Men and Commons of the Realm vanquished and destroyed the said *Spencers*, &c. Therefore our Sovereign Lord the King, by the Common Council of the Prelates, Earls, Barons, and other great Men, and of the Commons of the Realm, have provided, and ordained, &c. as follows. That no great Man, nor other of what Estate, Dignity or Condition soever he be, that came in with the said King that now is, and with the Queen in Aid of them, to pursue their said Enemies; and in which Pursuit the King his Father was taken and put in Ward, &c. shall be impeached, molested or grieved in Person, or in Goods, in any of the King's Courts, &c. for the Pursuit, and taking in Hold the Body of the said King *Edward*, nor for the Pursuit of any other Persons, nor taking their Goods, nor for the Death of any Man, nor any other Things perpetrated, or committed in the said Pursuit, from the Day of the King and Queen's Arrival, until the Day of the Coronation of the said King.

The Act of Indemnity is so full a Justification of the Necessity and Lawfulness of the Resistance that was then made against King *Edward II.* and his wicked Counsellors the *Spencers*, that it needs no Comment. And tho' King *Edward III.* took Warning by the Example of his Father, and was too wise then to follow the like Arbitrary Courses; yet *Richard II.* his Grandson, being a wilful rash young Prince, fell into all the Errors of his great Grandfather, and found the like, if not greater Resistance, from his Nobility and People: For when he had highly misgoverned the Realm by the Advice of his Favourites, *Alexander* Archbishop of *York*, the Duke of *Ireland*, and others; a Parliament being called in the 10th Year of his Reign, the Government of the Kingdom was taken out of their Hands, and committed to the Bishops of *Canterbury* and *Ely*, with *Thomas* Duke of *Gloucester*, the King's Uncle, *Richard* Earl of *Arundel*, and *Thomas* Earl of *Warwick*, and Nine or Ten other Lords and Bishops; but notwithstanding this, the King being newly of Age, refused to be governed by the said Duke, and Earls, but was carried about the Kingdom by the said Duke of *Ireland*, and others, to try what Forces they could raise, and also to hinder the said Duke and Earls from having any Access to him. But see what followed these violent and arbitrary Courses, as it is related by *Henry de Knighton*, who lived and wrote in that very Time, and is more exact in this King's Reign than any other Historian; he there tells us, that when *Thomas*

Duke

“ Duke of *Gloceſter*, and the other Biſhops and Earls now mentioned, found they
 “ could not proceed in the Government of the King and Kingdom, according to
 “ the Ordinance of the preceeding Parliament, through the Hindrance of *Michael*
 “ *de la Poole*, *Robert de Vere*, Duke of *Ireland*, *Nicholas Brembar*, and *Robert Tre-*
 “ *ſilian* Chief Juſtice, and others, who had ſeduced the King, and made him alie-
 “ nate himſelf from the Council of the ſaid Lords, to the great Damage of the
 “ Kingdom”. Whereupon the ſaid Duke of *Gloceſter*, and the Lords aforeſaid,
 with a great Guard of Knights, Eſquires, and Archers, came up towards *London*,
 and quartered in the Villages adjacent: And then the Archbiſhop of *Canterbury*,
 the Lord *Lover*, the Lord *Cobham*, the Lord *Eures*, with others, went to the King
 in the Name of the Duke and Earls, and demanded all the Perſons above-mentio-
 ned to be baniſhed as Seducers and Traitors to the King: And all the Lords then
 ſwore upon the Croſs of the ſaid Archbiſhop, not to deſiſt till they had obtained
 what they came for. The Concluſion of this Meeting was, That the King not be-
 ing able to withſtand them, was forced immediately to call that remarkable Par-
 liament of the 11th Year of his Reign, in which *Michael de la Poole* and the Duke
 of *Ireland* were attainted, and *Treſilian*, and divers other Judges, ſentenced to be
 hanged at *Tyburn*, upon the Impeachment of the ſaid Duke of *Gloceſter*, and the
 Earl of *Arundel*, for delivering their Opinions contrary to Law, and the Articles
 the King had not long before propoſed to them at *Nottingham*.

Ibid. 2700.

I ſhall omit the Reſiſtance, which *Henry* Duke of *Lancaſter* made after his Ar-
 rival, by the Aſſiſtance of the Nobility and People of the *North of England*, a-
 gainſt the Arbitrary Government of this King, being then in *Ireland*; not only
 becauſe it is notoriously known, but becauſe it was carried on farther than per-
 haps it needed to have been, and ended in the Depoſition of this King. Only
 in the firſt Year of *Henry* the IVth, there was the ſame Act of Indemnity almoſt
 word for word, paſſed for all thoſe that had come over with that King, and had
 aſſiſted him againſt *Richard* the Second, and his evil Counſellors, as was paſſed
 before in *primo* of *Edward* the Third. I ſhall not alſo inſiſt upon the Reſiſt-
 ance of *Richard* Duke of *York*, in the Reign of King *Henry* the VIth, who took
 up Arms againſt the Evil Government of the Queen, and her Minion the Duke
 of *Suffolk*; becauſe you may ſay, that this was juſtifiable by the Duke of *York*,
 as Right Heir of the Crown: Nor will I inſtance in the Reſiſtance made by the
 Two Houſes of Parliament, during the late Civil Wars, in the Time of King
Charles the Firſt, ſince it is diſputed to this Day, who was in the Fault, and be-
 gan this Civil War, whether the King or the Parliament: Only thus much I can-
 not omit to take notice of, That the King in none of his Declarations ever denied
 but that the People had a Right to reſiſt him, in caſe he made War upon them,
 or had introduced Arbitrary Government; and expreſſly owns in his Answer to
 one of the Parliament's Meſſages, that they had a ſufficient Power to re-
 ſtrain Tyranny, but denied himſelf to be guilty of it: And ſtill aſſerted, That
 he took up Arms in Defence of his juſt Right and Prerogative, to the Command
 of the *Militia* of the Kingdom, which they went about to take from him by
 Force.

M. I have with the greater Patience hearkened to your Hiſtory of Reſiſtance in
 all the Kings Reigns you have mentioned, becauſe I cannot deſire any better Ar-
 gument to prove the Unlawfulneſs of ſuch Reſiſtance, than thoſe Acts of Pardon
 and Indemnity which you muſt own have ſtill followed it even when the Barons
 proved moſt fortunate; as in that of *Henry* the Third, to the Earl of *Gloceſter*,
 and thoſe of his Party; and that of *Edward* the Firſt, to the Conſtable and Ma-
 reſchal, and their Followers: Nay, after the former Kings had been unjuſtly de-
 poſed, we ſtill find the Actors and Complices of ſuch wicked Actions, did not
 think themſelves ſafe till they had an Act of Indemnity paſſed to them, of all
 the Robberies and Murders they had committed in the War; as your ſelf have re-
 cited in the Two Acts of Parliament, in the Reigns of *Edward* the Third, and *Hen-*
ry the Fourth. Now if theſe Reſiſtances had not been downright Rebellions in
 the Eye of the Law, to what Purpoſe were theſe Acts of Indemnity paſſed, ſince
 no Man needs a Pardon, but rather merits a Reward for defending the Government
 eſtabliſh'd according to Law?

F. In Answer to this Objection (for which I am already prepared, ſince I
 foreſaw you might make it) pray give me leave to ask you, Whether you can

find the Words Treason, Rebellion, Robbery, or Murder, in any of these Acts of Pardon? And if you cannot, Whether you think Treason or Murder, could be pardon'd by general Words or not? And the Reason why I ask this Question, is, because if they could not, then the Consequence will be, That none of these Parliaments supposed that the Resistance that had been made, or all the other Acts performed in Pursuance of such Resistance, were looked upon by those that had done them, no not by the Parliament it self, to be Treason, Rebellion, or Murder; since certainly those that were Actors in such Resistances, and taking up of Arms, having the Power in their Hands, would not have fail'd to have had those Words inserted into those Acts of Indemnity, if they had supposed themselves guilty of those Crimes.

M. I cannot say that the Words Treason, and Rebellion, or Murder, are expressly mentioned in these Statutes, since even the Actors in them did not think it for their Credits, to own themselves to have been guilty of any such Crimes; yet all the particular Words and Expressions in these Acts amount to the very same Thing; for the taking up Arms with one that is not King, against him that is, and the actually seizing upon his Person, and keeping him in hold, was Treason at Common-Law, before the Statute of the 25th of *Edward the Third*: And is not taking Men's Goods by Force, and destroying their Persons in Time of Peace, Rebellion and Murder at Common Law? So that if these were the Facts they had been guilty of, and if these Acts were Treason, Rebellion, Robbery, and Murder; then certainly all Treasons, Rebellions, Robberies, and Murders, are likewise pardoned by those Statutes. And though 'tis true, the Law is now, That no Pardon of Treason or Murder shall be good, unless those Offences are particularly named: Yet this was so ordained by the Statute of the 13th of *Richard the Second*, by which it is particularly provided, That no Pardon shall be allowed before any Justice for the Death of a Man, &c. Treason, &c. unless the same Murder, Treason, &c. be specified in the said Charter; before which Statute Sir *Edward Coke*, in his *Second Instit.* tells us, That by the Pardon of all Felonies, Treason was pardoned, and so was Murder also.

Stat. 2. Ch. 1.

P. 236.

F. I cannot deny but that these Facts you mention were Treason, in Strictness of Law, before the making that Statute; yet does it not follow, that even these may be in some Cases justifiable (as well as binding a King, when he is out of his Wits) if the publick Peace of the Kingdom, and Preservation of the Government, according to the Fundamental Laws of the Kingdom, require it. Thus for Example; Suppose King *John*, after he had made actual War upon his Barons and People, had happened to have his Forces routed in the Field, can any one believe that it had been unlawful for them to have secured his Person to prevent his making a new War upon them? And yet this by the Letter of the Law had been Treason. Now there are many Actions, which in Strictness of Law are Treason, yet being for the publick Defence and Security of the Nation, deserve a Pardon of Course. Thus, if Foreign Enemies should Land in *England*, and a Neighbouring Nobleman or Gentleman, who has no Command over the *Militia* of the Countrey, should raise on the sudden, such a Force of his Tenants and Neighbours, as were sufficient to make a Head against them, till the *Militia* of the Countrey could come in to their Assistance; though this taking up of Arms, without an Express Commission for it, be a high Misdemeanor; (nay, Treason, according to your Principles) yet I suppose you will not deny, but that the Persons engaged in it, do not only deserve Pardon, but Thanks for their Courage, and so speedy a Defence of the Nation. And I remember I have read a famous Instance of this Kind, that when the Traytors concerned in the Powder-Plot found themselves discovered, they fled into *Warwickshire*, and thence into *Worcestershire*, and were pursued and taken by the High-Sheriff of that County in *Staffordshire*; which though a great Misdemeanor, since no Sheriff can justify carrying the *Posse Comitatus* out of the County; yet this was so well taken, that King *James* the First rewarded him, and (as I take it) Knighted him for his Pains.

But to apply this to the Matter in Dispute; though it is true, taking and imprisoning the King's Person is Treason in the Eye of the Law, yet (as in the Case of *Edward the Second*) if the Government could not be restored to its pristine State without that Extremity, it must, and will ever deserve a Pardon: And therefore you see the Parliament in the First of *Edward the Third*, not only pardons,

done, but justifies the doing of it, because done for that End. So likewise the Statute of the 11th of *Richard* the 11d. Chap. 1. not only indemnifies, but “justifies the Duke of *Glocester*, the Earls, Lords, and all others of his Party, for taking up Arms against the Persons above-mentioned, tho’ maintain’d and back’d by the King himself, as being done for the Weal and Safeguard of the King, the Maintenance of the Crown, and Salvation of the Realm. So much for the Point of making War against the King, and imprisoning his Person. So that if taking up Arms for the Safeguard of the King, and Salvation of the Kingdom, were just and necessary to be done, the Consequences of it, viz. the taking of Mens Goods, and killing of those that resist them, cannot be Robbery or Murder, because done in a State of War; which can never be carried on without such Acts of Hostility. And therefore you see in the Act of Pardon to the Earl of *Glocester*, and to the *Londoners*, granted in Parliament of the 51st of *Henry* the 3d. (which I have now cited) those that took part with the King are as expressly pardoned, as those that were with the Earl; and in the like Pardon to the Constable and Mareschal, in the Time of *Edward* the 1st. (which I now also quoted) those Lords would not own they had transgressed; but the Words are only, *Etiā transgressiones si quas fecerit*. So that since such Reformatiōns could not be brought about without Violence and Bloodshed, and some Irregularities, which in Times of Peace could not be justified by the strict Letter of the Law; it was but Reason, that for the quieting of Mens Minds, and their future Security, they should be indemnified for what they had done with so good an Intent, and for the Common Good of the Kingdom. But that such Acts of Pardon do not relate to the Titles such Kings had to the Crown, but only to their being Kings in the Eye of the Law, appears by a like Act of Pardon passed in Parliament in the First of *Henry* the 7th. to pardon and save harmless all those that came over with the King, and all that helped him to recover his just Right to the Kingdom against King *Richard* the 3d. there called, *that Usurper*. So that you may see, such Acts of Pardons do not concern the just Titles of Princes, nor the Justice of the War, but are to quiet Mens Minds under the New Government; whereas those that took part with the Usurper, were not pardoned, but left to the Law; since the present Government would not take care for their Security, that had obstructed its Settlement. So the Act of Oblivion of the 2d of *Charles* the 1d. though it pardons Treasons expressly, yet it as well pardons the Treasons of them that had Commissions from King *Charles* the 1st. or 2d. as well as those that acted by Commissions from other pretended Authorities. So that you see, in the Judgment of this so modern a Parliament, Men might be supposed to be guilty of Treason, tho’ they had taken part with the King, and had acted by his Commission, if the Things commanded were illegal.

M. I confess, you have taken a great deal of Pains, to justify taking up Arms against, nay, Imprisonment of our Kings, when that which you call the Preservation of the Government requires it; that is, when there is a Faction in the Kingdom strong enough to make a Disturbance. For it was very well said by *Tacitus*, in the Speech he makes for *Otho* to the Soldiers to take up Arms, and kill *Galba*, then Emperor; That it was in vain to speak more for the Justification of that Action, *quod laudari non potest nisi peractum*. Treasons, if successful, have never wanted a sufficient Party in the Nation to make up a Parliament to countenance them, and to pardon, nay, justify all those that have been Actors in them; as we may see by those Acts of Indemnity you mention: And therefore I am not the more convinced, that such Resistance was lawful, notwithstanding those specious Declarations of Parliament, of their being made for the Publick Good, and Preservation of the King and Kingdom.

But you have done very warily to pass by, without any Justification, the Deposition of King *Edward* the 2d. as also that of the Resistance (as you call it) of *Henry* Duke of *Lancaster* against King *Richard* the 2d. as also his Deposition, tho’ done in Parliament; since all the Proceedings against this King were repeal’d in Parliament, in the 1. of *Edward* the 4th, as appears by the Parliament Rolls of that King’s Reign; wherein the taking up Arms against King *Richard* by *Henry* Earl of *Derby*, is said to be done contrary to his Faith and Allegiance; and his taking the Crown, called Usurpation; and the killing of King *Richard* his Sovereign Lord, termed (as it justly deserved) Murder and Tyranny, which does (tho’ not directly, yet) by Consequence condemn his Deposition too, since he is after that

that here called King. And you do as warily pass by the late Rebellious War of the Long Parliament against King *Charles* the 1st. as also his horrid Murder before his own Gates; because you know very well, that this Doctrine of Resistance seldom stops with a bare Reformation of what is amiss; but commonly ends with the Murder or Deposition of the King, or else driving him from his Throne; as we now find it by woful Experience in the Person of our Unfortunate King, who was so lately forced to quit this Kingdom for the Security of his Person: And therefore, to put an end to this Part of the Dispute, the Parliament of the 13th of King *Charles* the 1st. were so sensible of the great Mischiefs that attended this Rebellious Doctrine, as having been the Destruction of one of the best Princes that ever reigned, and the Occasion of the Loss of so many brave Men, besides the Ruin of so many great and Noble Families, that they were resolved to do their utmost to prevent it for the future; and therefore the King and Parliament, in the 13th and 14th of King *Charles* the 1st. passed those remarkable Acts concerning the Settlement of the *Militia* in the King and his Successors, to take away all Dispute about it, though they declare it to have been his Ancient Right: And therefore, to take away all Pretence for taking up Arms either by the Two Houses of Parliament, or any other Person whatsoever; they, in Preamble to both these, that these Acts thus expressly declare, "Forasmuch
 " as within all his Majesty's Realms and Dominions, the sole Supreme Go-
 " vernment, Command and Disposition of the *Militia*, and of all Forces by
 " Sea and Land, and of all Forts and Places of Strength, is, and by the
 " Law of *England* ever was, the undoubted Right of his Majesty's and his
 " Royal Predecessors, Kings and Queens of *England*; and that both, or either
 " Houses of Parliament cannot, nor ought to pretend to the same, nor can
 " lawfully raise or levy War, Offensive or Defensive, against his Majesty,
 " his Heirs or lawful Successors: And yet the contrary hereof hath of late
 " been practised almost to the Ruin and Destruction of this Kingdom; and
 " during the late Usurped Governments, many Evil and Rebellious Principles
 " have been instilled into the Minds of the People of this Kingdom, which,
 " unless prevented, may break forth to the Disturbance of the Peace and Quiet
 " thereof, &c.

13 Car. 2.
Chap. 6.

And in pursuance of this Statute, it was likewise ordained by the Authority aforesaid, in the 2d Statute for the *Militia* of the 14th Year of the same King, where not only the same Preamble is recited *verbatim*, as before in the former Statute, but it is also Enacted, "That no Person, (no not a Peer of
 " the Realm) shall be capable of acting as Lieutenant, Deputy-Lieutenant,
 " Officer or Soldier, by virtue of this Act, unless after the Oaths of Alle-
 " giance and Supremacy they take this Oath following; *viz.* I *A. B.* do
 " declare and believe, That it is not lawful, upon any Pretence whatsoever,
 " to take Arms against the King; and that I do abhor that traiterous Po-
 " sition, that Arms may be taken by his Authority against his Person, or
 " against those that are Commissioned by him in pursuance of such Military
 " Commissions. And it is also to be noted, that all Mayors of Cities, or other
 " Corporations, were obliged, by a former Statute of the 13th of this King, to take
 " the same Oath. From both which Statutes and Declaration, we may draw these
 " Conclusions: First, That the *Militia* (*i. e.* the Command of all Military For-
 " ces and Warlike Affairs) are declared to be wholly in the King. Secondly,
 " That either, or both Houses of Parliament, cannot make any War, Offensive or
 " Defensive, against him, &c. Pray mark that. Thirdly, That the contrary Pra-
 " ctice hath tended almost to the Destruction of this Kingdom, and that many
 " Evil and Rebellious Principles (whereof this without doubt is intended for the
 " chief) have been instilled into the Minds of the People, &c. And lastly, That
 " in pursuance thereof, all Persons above-mentioned were not only obliged to re-
 " nounce taking up Arms against the King, upon any Pretence whatsoever; but also
 " against any that shall be authoriz'd by the King's Military Commissions, without
 " any Exception. And it is farther Enacted, That all Clergymen should be
 " obliged to take this Oath, as well as the Laity; and it is likewise there or-
 " dained, That all Clergymen who were to enjoy any Livings or Preferments in
 " the Church, were likewise, for the Space of Twenty Years next ensuing, obli-
 " ged to subscribe this Declaration. So that it is no wonder, if the Loyal Clergy
 " of

Chap. 3.

of the Church of *England*, think themselves not only tied by the express Rules of Scripture, but also by the Laws of the Land, strictly to observe this great Law of Passive Obedience, and Non Resistance. Now pray see here the Doctrine of Non-Resistance in its full Amplitude, yea, this very Doctrine declared to be the Law of this Kingdom, and that by two express Acts of Parliament. And can you think the Two Houses were not in earnest when they made this Declaration? Surely had they not been so, they had been very ridiculous to jest with all our Laws and Liberties; had they not been, I say, verily persuaded of the Truth of this Doctrine by Law, as well as by Scripture. So that I hope you must now be forced to confess, that even our own Representatives have solemnly renounced for themselves and the whole Nation, all Right of Resistance, so much as defensive, against those commissioned by the King, upon any Pretence or Occasion whatsoever; and we have left us nothing whereby to defend our selves against our Kings, or those commissioned by them, (no, not if they never so much abuse their Power) but the old Primitive Artillery of *Preces* and *Lachrymæ*. Jov. p. 219

F. As for what you have more than once said, that this Doctrine of Resistance, if carried home, always ends in the Deposition and Murder of the King; tho' it hath I grant sometimes happened, yet that has not been always so, but most often to the contrary; as appears by those Resistances that were made in the Reigns of King *Richard I.* *Henry III.* *Edward I.* and divers Times in *Edward* and *Richard III.*'s Reigns, before Things were driven to that Extremity, as they afterwards were. And as I will not justify the Deposition of those Princes, tho' done by Parliament, yet will I not absolutely condemn them; since no Act of Parliament hath, as I know, ever done it: And tho' it is true, all the Proceedings in Parliament against *Edward II.* are taken off the Rolls, yet was it not done by Order of Parliament, but by *Richard II.* alone, when he by his exorbitant Courses feared to be served after the same Manner. But that there was in those Times some Ancient Law extant, which was also destroyed by that King, appears by that remarkable Declaration of the Lords and Commons in Parliament, sent by way of Message to the King (then wilfully absenting himself from the Parliament) by the Duke of *Glocester* his Uncle, and the Bishop of *Ely*, who sure were too great to tell so notorious a Lye. The Speech you will find at large in *Knigh-ton*, beginning thus, *Domine Rex*; and after many Petitions, and good Advices, at last thus concludes, Col. 2583
Sed & unum aliud de animo nostro superest nobis ex parte Populi vestri vobis intimare, habent enim ex antiquo Statuto, & de facto non longe retroactis temporibus experienter quod dolendum est habito, si Rex maligno Consilio quocunque, vel inepta contumacia aut contemptu, seu proterva voluntate singulari, aut quovis modo irregulari se alienaverit à Populo suo, nec voluerit per jura Regni, & Statuta, & laudabiles Ordinationes cum salubri Consilio Dominorum, & Procerum Regni, gubernari, & regulari, sed captiose in suis insanis Consiliis propriam voluntatem suam singularem proterve exercere, tunc licitum est iis cum communi assensu Populi Regni, ipsum Regem de Regali solio abrogare & propinquiorem aliquem de stirpe Regis loco ejus in Regni solio sublimare.

From whence you may observe, that the Lords here relate to an Ancient Statute or Law then in being, tho' the Execution of it on the Person of his great Grandfather *Edward II.* was but of Times not long passed; and that King *Richard* might as well destroy the Record of that Law, being not then commonly known, or in private Men's Hands, as well as he did divers other Records; as appears in the 24th Article against this King, wherein it is set forth, "That the said King had caused the Rolls of the Records touching the State and Government of this Kingdom to be defaced and razed, to the great Prejudice of his People, and the Disinheriton of the said Realm, &c. So that nothing is more certain, than that the Two Houses of Parliament, at that Time, did look upon it as their undoubted Right to depose the King in case he violated the fundamental Laws and Constitutions of the Kingdom. Tho' how this could consist with that Power which the King then exercised, of calling and dissolving Parliaments at his Pleasure, I do not understand, since it can never be supposed that a King, whilst in full Power, would permit a Parliament, called in his Name, to sit, to depose himself for evil Government.

As for the War made by the Two Houses against King *Charles I.* I shall not undertake to justify it, for the Reasons already given; as also because it

it was not a War undertaken by the general Consent of the whole Kingdom, but carried on chiefly by the Puritan or Presbyterian Party : For tho' the City of *London*, and many other great Towns were for the Parliament ; yet it is also certain, that the *major* Part of the Nobility and Gentry of *England* fought for the King, and were so considerable a Number, as to make an Anti-Parliament at *Oxford* ; so that this War could never have happened, had not the King parted with the Power of dissolving of the Parliament out of his Hands. Much less will I justify the Murder of this King, or of any others above-mentioned, as being no necessary Consequences of that Resistance I only allow for Lawful, *viz.* That of the whole or *major* Part of the Nation. Nor were *Edward II.* or *Richard II.* put to Death by any Act or Order of Parliament, but were murdered in Prison ; and the Murderers of *Edward II.* were afterwards attainted by Act of Parliament and executed as they deserved. But as for the Murder of King *Charles I.* it is not to be taken into this Account, it being not done by the Authority of the Lords and Commons in Parliament, but by a Factious Rump or Fag-End of the House of Commons, who sat by the Power of the Army ; after far the *major* Part of the Members who were for the King were shut out of Doors, and the Lords voted useless and dangerous.

M. I confess you have made as good an Apology for these Actions as the Matter will bear ; but that neither of the Two Houses can at this Day have any coercive Power over the King, or to call him to an Account for any thing he has done, appears by the express Declaration of both Houses in the Statute of the 12th of *Charles II.* as also in those but now cited, in which they utterly disclaim all making War, whether offensive or defensive, against his Majesty ; much less can he be subject to any other Coercive or Vindictive Power, or ought any ways to be resisted by private Persons : Therefore supposing I should grant (as I do not) that the Parliaments had formerly a Power of deposing of their Kings, or that the Clergy, Nobility and People had also a Right of taking up Arms against the King in Case of notorious Tyranny, and Misgovernment ; yet is all such Resistance expressly renounced, and declared unlawful by the Oath and Declarations now cited. So that tho' in the dark Times of Popery, such Resistance might be counted lawful, not only by the Laity, but also by the Bishops and Clergy, who ought to have taught the People better Doctrine ; yet I think it had been much better for the Nation to have endured the worst that could have happened from the Tyranny of Kings, than to have transgress'd the Rules of the Gospel, and the constant Doctrine of the Primitive Church by Resistance and Rebellion against the Supream Power of the Nation.

E. I. shall not now maintain that the Two Houses of Parliament have any Authority at this Day to depose the King, or levy a War against him, upon any Account ; yet that they have still a Power to judge of the King's Actions, whether consonant to Law or not, and whether he has not broke the Fundamental Constitutions of the Kingdom, is no where given up, as I know of : But that Resistance in some Cases is not contrary to the Doctrine of the Gospel, I have already proved, and that it was not directly contrary to the Laws of the Land before these Statutes, you do partly grant. But since the main Strength of your Cause, lies in this Oath appointed by these Acts of Parliament, therefore if I can give a satisfactory Account of the true Meaning and Sense of these Acts, to be otherwise than you suppose, I hope you will grant that Resistance may still be lawfully made by the whole Body of the People in the Cases I have now put, against any Persons, who under Colour and Pretence of the King's Commission should violently assault their Persons in the free Exercise of their Religion, as it is by Law established, or should go about to invade their just Liberties and Properties, which the Fundamental Laws of *England* have conferred upon every Free-born Subject of it.

And in order to the clearer Proof of this, I shall make use of this Method ; I shall first explain the Terms of this Declaration, and then I shall proceed to shew you that even in a legal Sense all defensive Arms, or Resistance of the King's Person in some Cases, or of those commissioned by him, is not forbidden, nor intended to be forbid by these Statutes and Declarations : First then, by taking Arms against the King, is certainly meant no more than making War against the King, according to the Statute of the Twenty fifth of *Edward III.* which declares

clares making War against the King to be Treason ; and this is unlawful upon any Pretence whatsoever. Secondly , The Clause , *by his Authority against his Person*, is only to be understood of the King's Legal Authority ; and by his Person, is meant his Natural and Politick Person, when acting together for the same Ends, as I shall shew you by and by. So that both these Statutes are but Declaratory of the Ancient Common-Law of *England* against taking up Arms, and making War against the King, and do not (in my Opinion) introduce any new Law concerning this Matter : So that whatever was Treason by the Statute of the 25th of *Edward* the Third is Treason by these Statutes, and no more ; viz. all taking up Arms, or actual making War against the King in order to kill, depose, or imprison him, &c. as Sir *Edward Coke* shews us in his *Third Institut.* in his Notes upon this Statute ; yet notwithstanding, after this Statute of the 25th of *Edward* the Third, the Clergy, Nobility, and People of *England* assembled in Parliament, did suppose it still lawful to take up Arms against those illegally commissioned by the King, in case of notorious Misgovernment and Breach of the Fundamental Laws of the Nation ; as appears by that general Resistance made by Reason of the evil Government of the Duke of *Ireland*, and those concerned with him, in the 11th of *Richard* the Second ; which, as I have already proved, was allowed for lawful by Act of Parliament, and consequently by the King's own Consent, without which it could never have been so declared. The like I may say for that Resistance which was made in King *Henry* the Sixth's Reign, by *Richard* Duke of *York*, and the Earls and Barons of his Party, against the Evil Government of the Queen, and the Duke of *Somerset*, who governed all Affairs in an Arbitrary and yet unsuccessful Manner, by Reason of the Easiness and Weakness of King *Henry*. But though this Resistance was also approved of in the next Parliament of the 23d Year of this King, yet I shall not so much insist upon it, because I know you will alledge, that this was made by the Lawful Heir of the Crown against an Usurper, since the Crown was not long after adjudged to be his Right, though King *Henry* was allowed to wear it during his Life : Yet however, it shews the Opinion of the Clergy, Nobility, and People of *England* at that Time, concerning the Lawfulness of such Resistance, before this Declaration of the Estates of the Kingdom, concerning the Legality of the Duke of *York*'s Title, was made in the Parliament above-mentioned.

Vid. Grafton's Chronicle, p. 627.

Thirdly , That the Parliament by these Statute of the 13th of *Charles* the Second for the *Militia*, never intended thereby to enable, or leave it in the Power of that King, or his Successors, to make this Kingdom an absolute Despotick Monarchy instead of a limited one ; as they must have done, had they declared that the King, and those Commissioned by him, might do what they pleased with the Religion, Lives, Liberties, and Estates of the People of this Nation, and that it was Treason to resist in any Case whatsoever. Sure they could not but remember that apparent Commission of Sir *Phelim O'neal*'s, in the Year --41, whereby he pretended to be impowered to drive the *English* Protestants out of *Ireland*, and to set up the Popish Religion in that Kingdom, and restore the *Irish* to their Estates ; and sure divers of them could not be unmindful that this was to give away all Right of Self-Defence, in case any future King should by his own innate Tyrannical Temper, or the evil Counsel of wicked Men, be persuaded to use Force upon the Persons of the Lords and Commons, either whilst they were actually sitting, or in their Passage to the Two Houses, since by this Act or Oath, if understood in your Sense, they must have barred themselves, and the whole Nation, of all Right of Self-Defence, in any Case whatsoever, though of the greatest Extremity ; and therefore I doubt not, but the Intent of this Parliament was to leave Things as they found them. And as it was absolutely unlawful for the People of this Nation to take up Arms against the King, so it is also as unlawful in him, or those Commissioned by him, to make War upon the People, or to disseize them by Force of their Religion, just Rights, Liberties, or Estates : And if the King hath a Right to defend himself, and his Crown and Dignity, against Rebellion, so must the People of this Nation have a Right likewise to defend themselves against Arbitrary Power, in case of an Invasion of any of the Fundamental Rights above-mentioned ; or else all Bounds between a Limited and Despotick Power will be quite taken away, and the King may make himself as absolute as the King of *France* or Great *Turk* whenever he pleases.

M. I will not dispute with you about bare Matter of Fact, or that a prevailing Faction might not in turbulent Times, and during the Reigns of weak and ill-advised Princes, take upon them by Force of Arms, to remove Evil Councillors, and to put the Government of the Kingdom in what Hands they pleased, and then procure Acts of Parliament to indemnify themselves for so doing: Yet I cannot allow that even such Acts could make it lawful to take up Arms against the King, or those Commissioned by him, upon any Pretence whatsoever. So that though I grant that the Intent of this Parliament of King *Charles* the Second, was not to make any new Law against Resistance, or taking up Arms against the King, yet was it their Design so to explain the Ancient Statute of the 25th of *Edward* the Third, that none should for the Future doubt in the least, that all taking up Arms, or Resistance of the King, or those Commissioned by him, upon any Pretence whatsoever, was unlawful and treasonable: And for this we need go no farther than the very Words of these Declarations, which the Parliaments of the 12th and 13th of *Charles* the Second have made concerning this Matter: As First, in the Statute of the 12th of *Car.* 2. *Cap.* 20, for attainting the Regicides, the Two Houses of Parliament expressly declare, "That by the Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People collectively, or representatively, nor any other Persons whatsoever, ever had, hath, or ought to have any Coercive Power over the Persons of the Kings of this Realm". Whereby not only all the Treacherous Examples of the Depositions, and Imprisonments of King *Edward*, and *Richard* the Second, are expressly condemned; but also all taking Arms to force the King to redress our Grievances, whether he will or not. And farther, That all Arms, whether Offensive or Defensive, are expressly forbid, pray mind that Clause in the Preamble to these Acts of the *Magna* I now mentioned: wherein that Parliament expressly renounces "all taking up Arms, as well *Defensive* as Offensive against the King: And the Words of the Oath it self are yet more strict, "That it is not lawful, *upon any Pretence whatsoever*, to take up Arms against the King". Now can any Thing be plainer, than that all defensive Arms, tho' for our Religion, Lives, and Liberties, or whatsoever else you please, are expressly declared to be against the Fundamental Laws of this Kingdom.

But as for the dreadful Consequences of this Law, if never so strictly taken, they are not so bad as you are please to fancy: For as to your Instance of Sir *Phelim O'neal's* pretended Commission from King *Charles* the First, you may be very well satisfied, that it was a notorious Piece of Forgery; since besides that good King's constant Denial of any such Commission granted by him, Sir *Phelim*, when he came to suffer in *Ireland*, for raising that horrid Rebellion, did voluntarily at the Gallows acknowledge, that he had forged it himself, by putting the Seal of an old Parent, which he had by him, to that pretended Commission you now mention: Nor indeed can it ever enter into my Head, that any King should grant a Commission to destroy or make War upon his People as long as they continue in their Duty to him, though of a different Religion from himself; tho' perhaps he may think fit for some Reasons, to disarm them, or deny them the publick Exercise of their Religion, or render them incapable of bearing any Offices of publick Trust in the Kingdom. But if these should be lawful Causes of Resistance, why the Papists should not be allowed it as well as the Protestants, I can see no Reason to the contrary. As for your other Instance, that the Parliament by renouncing all defensive Arms, must be supposed likewise to give up all Right of Self-defence, in Case the King, or any Commissioned by him, should use any Violence to the Persons of the Lords and Commons assembled in Parliament, or in going thither: This is so unlikely, and remote a Case, that it hardly comes under the Consideration of a bare Possibility. But, however, let the worst that can happen, I am very well satisfied, that the Parliament was then so thoroughly convinced of the Mischiefs had befallen this Nation by this Republican Doctrine of Resistance, having been the Cause of the Destruction of the best constituted Church and Government in the World, as also of the Murder of one of the best Princes that ever Reigned, that they were resolved rather to trust to the Coronation Oaths, and innate Goodness of our present and future Kings, than to suppose any War could be lawfully made against them, upon any Account whatsoever: which would have been expressly contrary not only to the Doctrine of the Church of *England*, but the known Laws of the Land.

F. I do not deny, but the Persons of the Kings and Queens of this Realm are, and ought to be Sacred and Inviolable; and yet no Man will therefore say, that they are irresistible too in all Cases whatsoever. As if the King (for Example) should attempt to ravish Women, or rob, or murder Men upon the Highway, or in the Streets, as the Ancient Historians relate of *Nero* and *Commodus* the Emperors, and as is reported of the last King of *Portugal*, and which was one of the Reasons of the Estates of the Kingdom removing him from the Government. And as our *Henry* the Vth. is related by our Historians to have robbed Men upon the Highway before he was King: So if he had gone about to continue the same Frolick after he came to the Crown, I do believe his Person, and all those that robbed by his Commission, had not been irresistible; nor would it have been Treason within the Statute of the 25th of *Edward* the IIIrd. though he was then actually King, any more than it would have been Treason had the like happened when he was Prince, tho' he was expressly within that Statute. And yet this would not have contradicted the Parliament's Declaration in the 12th of *Car.* the IId. That neither the Parliament nor the People have Coercive Power over the Persons of the Kings of this Realm; since by Coercive Power must be here understood, his being subject to the Penalties of the Law, or being called to an Account by any Jurisdiction. But there is a vast Difference between that, and Resistance for Self-Defence, since I may use this against the Violence of my Father in the State of Nature, as I have already proved; tho' I cannot justify the Punishment of my Father, or calling him to an Account as his Superior: Therefore 'tis only in the King's Politick Capacity, that he can be said to do no Wrong; since you see he may personally commit the greatest Crimes imaginable, tho' his Person is unpunishable for want of a Superior Power to call him to an Account: Yet 'tis not so with those who act by his Illegal Commissions or Commands; since, having delegated the Executive Part of his Regal Power to his subordinate Ministers and Officers, 'tis they that are accountable and punishable too by the Law of the Land, in case they any ways transgress or violate it by his illegal Commissions or Commands, as I shall prove more at large by and by. And as no War, properly so called, can be made against a single Person, but against a Man, as he is aided or assisted by many others; so this War against the King can be only interpreted of such Wars or Rebellions as are made against him in his politick Capacity, as he is King and Supreme Governor of the Realm, and the Commander of all the *Militia* thereof to legal Intents, and for the Defence thereof against Foreign or Domestick Enemies; nor was there any great Fear, according to the Ancient Legal Constitution of this Kingdom, that this could often fall out, or indeed be put in practice to any other Purpose by the Kings of this Realm, if we consider the Ancient Form of ordering the Forces or *Militia* of this Kingdom.

For, in the first place, I desire you to observe, That by the Common Law of *England*, before these Acts of the *Militia*, the King himself could not, but in Case of Invasion or Insurrection, levy or keep on foot any standing Forces in *England*, unless for Foreign Succours, which was usually by Contract with some great Lord or other Person, or by Tenure, against the *Scotch* and *Welsh*; and as for the *Militia*, it was never reduced into standing Troops, Companies, or Regiments, till the *Spanish* Invasion, as will appear by all Acts of Parliament in the Statutes at large, where Acts for the Assize of Arms were made only for Men to provide and have in Readiness such Horses and Arms, to shew them before the King's Commissioners when they should be required to take View of them; a Regimented *Militia*, being of no elder Date than Queen *Elizabeth*. But King *James* the Ist. did, by Act of Parliament in the first Year of his Reign, repeal all former Acts for Assize of Arms, and never established any thing in lieu thereof: So it stood till King *Charles* the IId.'s Time, that these new Acts for the *Militia* were made. And (to confirm this Point beyond all Dispute) in all the Quarrels between the King and the Barons, and *York* and *Lancaster*, the Parliament often refused to meet until the Forces were disbanded that were raised upon those Occasions. Nor had any King standing Forces or Guards, till *Henry* the VIIth. when that of the Yeomen of the Guard was settled by a special Act of Parliament: And what is most remarkable, the Commons in the Long Parliament of *Charles* the IId. did, by their Votes entred upon their Journals, declare and assert, That by Law no Armed Force could be kept up in Time of Peace, except the *Militia*; and as for Foreign Succours, they were obliged to be carried immediately to the

Port of their Discharge, and were not to exceed one Month at farthest from the Time of their first Muster. As for Castles and Forts within the Realm, they were almost all supplied and defended by Tenures; but for the *Militia* of Old Time, it was in the Sheriffs of the Counties to make use thereof for the Execution of the Laws, and Defence of the Kingdom, except in the Cases aforesaid; and it was Treason for any Subject to levy Soldiers, except by the King's Commission, and in the Cases aforesaid; or so much as to ride or go armed, as may appear by the Statute of *Northampton*, in the 2d of *Edward* the 3d. much less was it lawful for them to take up Arms, unless in their own Defence against illegal Violence, and in such manner as the Law directs: And it was one of the Articles that was adjudged to be Treason in Parliament against *Mortimer*, That he rode armed to Parliament, and threatened the Prelates and Peers that did any thing against his Will, and who advised the King to levy War upon his Subjects. See also *Coke's* 4th Institutes, *Title Council-board*, where the 4th Article against the *Spencers* is, "That they falsely and maliciously had counselled the King to raise Horse and Arms in Destruction of the good People, against the Form of *Magna Charta*; and so by their evil Counsel would have moved War within the Realm, to the Destruction of Holy Church and of the People, for their proper Quarrel: So that taking Arms by the King against his Subjects, and the Subjects against the King, was both alike against Law.

Vid. *Parliam.*
Roll. 4to. Ed. 3.
de Reg. de Mort-
uo Mari.
Art. 2.

2dly, That taking Arms against the King, in Construction of Law, is Levying War: But this can by no means extend to Defensive Arms in Maintenance of the Law, which is allowed and enjoined; and that nothing else was here meant, is plain, since by the subsequent Words in this Oath, it is restrained to the taking Arms by his Authority against his Person, or those Commissioned by him: Which shews, that nothing here is intended to be forbidden, but taking up Offensive Arms upon popular Pretences, without and against the Authority of the Law; which is further explained in another Test by the Authority of both Houses of Parliament.

Thirdly, 'Tis observable, this is but a Test upon some that were to come into Offices, and can by no means make any Change in the Ancient Law, which cannot be changed by Implication. Nor does this amount to so much; the first Part of this Oath requiring only that the Party admitted into Office, shall so declare and believe; and tho' the Second Clause calls it a Traiterous Position, yet it is restrained only to these Two Particulars, "That Arms may not be taken up by the King's Authority against his Person, or those Commissioned by him: Which can have reference to nothing but that Distinction taken up in the late Times of Civil War, when the Parliament pretended to take Arms, and grant Commissions in the Name of King and Parliament, by virtue of that Authority which they supposed he left with them at *Westminster*: So that this Clause can by no means exclude any Arms made use of for legal Defence according to Law.

Fourthly and Lastly, Tho' the Words, *against those Commissioned by him*, may seem to extend the Matter further, and is mistaken by some, as if it required at least Passive Obedience to all Commissions of the King, tho' never so illegal; yet there is not the least Colour for it, since nothing is a Commission but the King's legal Command or Authority pursuant to some Law, and for putting the same in Execution, which is the legal Definition of a Commission. And when this Test was first brought in to the Second Parliament of King *Charles* the 1st. and that the Word Legal was offered to be added to the Bill; upon a long Debate it was only left out, because it was declared by all the Lawyers in the House, (even by Sir *Heneage Finch*, then the King's Solicitor) and agreed to by the whole House, That it was clearly implied, and could bear no other Construction, but that all Illegal Commissions were null and void, and in no legal Sense could be called Commissions: So that taking up Arms in the Defence of the Law, and pursuant thereunto, cannot in any wise be called a taking Arms against the King's Person, or those Commissioned by him. And farther, that by the Words, *in pursuance of such Military Commissions*, are meant such as are warranted by that Act, and such as the King may issue by his Royal Authority, which is bounded by Law, and consequently cannot grant any Commissions, but what are according to Law. So that if these Commissions are granted to Persons utterly disabled by Law to take them, as all are that do not take the Test appointed by the Act of the

the 25th of King *Charles II.* Entituled, *An Act to prevent the Dangers that may arise from Popish Recusants*: As also all Commissions to do any Illegal, violent Action, are absolutely void, and consequently may be resisted; or else our *Magna Charta*, with all the other Laws that establish Liberty and Property, as also our very Religion it self Established by Law, may be either undermined by the King's new dispensing Power, or else subverted by open Force; and every Commission-Officer in a Red Coat, will be as Sacred and Irresistible as the King himself.

But to conclude: That the Instances I have given, that the King's Commission may be abused to the Destruction of the Nation; nay, of the whole Parliament, are not so unlikely and remote as you imagine; Pray let me put you in Mind, that as for that pretended Commission to Sir *Phelim O'neal*; tho' it is true, it proved at last to be forged, yet was it not known to be so till long after; and therefore having all the Signs of a true Commission under the King's Great Seal, the poor Protestants in *Ireland* were to have had their Throats cut according to this Oath, before ever they could be satisfied whether it were true or not. But that a Popish King persecuting and destroying his Protestant Subjects only for Matters of Religion, is not so improbable a Thing as you would have it; the *French* King's late Dragooning, Imprisoning, and sending to the Gallies all that refused to renounce Heresy, (as they call it,) and subscribe to the Articles of the *Romish* Religion, has given us but too sad and recent an Example: And how you can assure me, that the King acting upon these very Principles, and being governed by Jesuit Confessors, will never do the same Things, I should be glad to receive some better Satisfaction than his bare Word to the contrary.

Nor yet is my other Instance of its being left according to your Doctrine in the King's Power, to make a violent Assault upon the Persons both of the Lords and Commons assembled in Parliament, whenever he pleased, without any Resistance whatsoever, so remote and improbable as you are pleased to make it; since you may find it still upon Record among the Articles exhibited in Parliament against *Robert de Vere*, Duke of *Ireland*, *Robert Tresilian*, Chief Justice, and Sir *Nicholas Brembar*, in the Parliament of the 11th of *Richard II.* (which I have already mentioned) the 15th Article of which was, "That they by their false Council
" had caused the King to command the said *Nicholas*, being then Mayor of *Lon-*
" *don*, suddenly to rise with a great Power to kill, and put to death the said
" Lords; (*viz.* *Thomas* Duke of *Glocester*, and the other Lords there named)
" and the Commons (*viz.* of the Parliament of the 10th of this
" King) who were not of their Party and Conspiracy; for the doing of which
" Wickedness, the said grand Traytors aforesaid, were Parties and Presents to the
" Destruction of the King and his Realm. So that if this Treason had not been
discover'd, and that no private Persons might then resist those Commissioned by the King, it would have been Treason, according to your Principles, for the said Lords and Commons to have resisted those that were thus sent to assault them, and take away their Lives; and what hath once happened, 'tis not impossible but it may happen again. Therefore this is a Thing to be considered as a necessary Consequence of your Sense of this Oath. So that upon the whole Matter, and considering the late of Scene of Affairs, I durst leave it to the Judgment of any indifferent Foreigner, tho' a Papist, which was most likely, before the unexpected Coming of the Prince of *Orange* into this Kingdom, that the People should rise up in Arms, and expel the King from his Throne, or that he should by Virtue of the pretended Sense of this Oath, back'd by your Doctrine of Passive Obedience, have enslaved this Nation, and set up what Government and Religion he pleased.

Vid. Rot. Parl.
11 Rich. 2.
pars secunda.

M. I must confess you have given a very cunning and specious Gloss upon the Words of this Oath, and Declaration of the Parliament of King *Charles II.* but whether it is legal or not, I very much doubt, since I never heard of it before; and I could have wish'd, that if they designed not to lay a Snare upon Men's Consciences in this great Point, that they would have been more clear in expressing all those Cases wherein it might be lawful for us to resist the King, or those Commissioned by him; as also who should judge, when the King's Commissions are so illegal and violent as to require Resistance; for if every private Subject may judge of the Legality, or Illegality of the King's Military Commissions, and can raise a Party strong enough to make Opposition against those that are Commissioned

fioned by them in the Execution of the King's Orders, a discontented Faction may soon find a Pretence to raise another Rebellion, and Civil War, as dreadful as the former; and notwithstanding your great Care and Concern for the King's Person, which you grant to be sacred and inviolable, could it long continue so? For if the King himself appeared at the Head of his Men, to command and encourage them in their Duty, it would be much worse, as long as the Matter they took up Arms for; should be by them accounted a Violation of the Laws. Thus we may remember, that though the Parliament of Forty One did pretend to take up Arms for Defence of the King's Person, and only to take away Evil Counsellors; yet did they for all that, order their Generals and Officers to fight as much when the King was personally present, as at any other Place or Time; so that his Majesty's Person (had not God thought fit to order it otherwise) might have been as well destroyed in the Battels of *Edgehill*, or *Naseby*, as his great Grandfather King *James III.* of *Scotland*, was in that Battel against his Rebellious Subjects, Headed by his own Son. So that according to your Interpretation, instead of mending the Matter, this Parliament of King *Charles II.* had only left it far worse than they found it. For whereas the Long Parliament made themselves the sole Judges, and Redressers of the King's Violations of the Peoples Rights; now according to your Interpretation of this Oath, and Declaration of the Parliament of King *Charles* the Second, every private Man may not only judge of the King's Violation of the Law by his Military Commissions; but also make Resistance against them, whenever they think themselves able so to do. And then notwithstanding that Parliament's utter renouncing all Arms, whether offensive or defensive, to be raised by themselves against the King, they would have still left a Power in any Part of the People strong enough to make this Resistance which they had renounced for themselves, who are their Lawful Representatives. Thus for Example; supposing the last Civil War had begun upon the Account of raising of Ship-Money, which whether it was lawful, I will not now dispute; it was sufficient that all the Judges except Two, gave their Opinions for it; and if any County in *England* strong enough to make an Insurrection, had rose in Arms upon the Levying of this Tax (as it has several times happened even about Taxes granted in Parliament) this (though small) yet being look'd upon against Law, must have engaged the whole Nation in a Civil War, and also endangered His Majesty's Person, in case he had appeared in the Field with those Men he had raised to subdue that Rebellion; so that I am still satisfied that it is far better to suffer a Mischief than an Inconvenience; that is, it is better to trust to the King's Conscience and Discretion, what Commissions to grant, though sometimes perhaps they may chance to be illegal, than to leave it in the Power of the People to rise in Rebellion, whenever they think such Commissions to violate their supposed, or pretended Liberties and Properties.

F. I see you will not argue against the Resistance of the King's Person, in case he should go about to Ravish, Rob, or Murder his People. But now you raise another Difficulty who shall judge, and consequently make this Resistance against the King's Commissions, when executed by illegal Persons, or to illegal and violent Ends. For if the People may judge for themselves of the Illegality of such Commissions, a Rebellion may be raised, and His Majesty's Person endangered, notwithstanding all the Provision the Parliament have made against it. But before I answer this Argument of yours, pray give me leave to ask you One or Two Questions: Do you think the King's late Declaration for the Dispensing Power, and the Commissions granted thereupon, to be according to Law or not?

M. I must confess I think they are unlawful, yet it does not follow that they may be therefore resisted.

F. I do not ask you that now; but only tell me whether you think the Bishops are obliged in Conscience to disperse that Declaration, or the Clergy to read it in their Churches? And whether those have done well who have refused to read it?

M. I must tell you, I am so good a Protestant, and so true an *Englishman*, that I cannot allow the King that Power; and therefore I must grant that the Bishops did bravely, and like true Christian Bishops, to refuse to disperse it; and where it was dispersed, the Inferior Clergy have done very well not to read it.

F. Well then, notwithstanding all the dreadful Mischiefs proceeding from private Subjects judging of the Legality, or Illegality of the King's Declarations, and Commissions, or Commands; yet they may, it seems, not only judge whether they are lawful or not; but a Disobedience to them may not only be lawfully exercised, but is very commendable. Now what is this Disobedience to these Commands, but a Moral, or Civil Resistance of the King's Power in this Matter? And why may not such a Judgment be made by the People in as plain a Case, and a Resistance also follow thereupon against such violent illegal Commissions (suppose to raise Money without Act of Parliament, or to Dragoon Men to go to Mass) since the Violence is more evident and apparent in this Case upon Men's Persons, than in the other upon the bare Consciences of the Bishops and Clergy? For the Force being more immediate and pressing upon their Persons and Estates, there is no other Means left but to resist it if they are able.

M. I can give you very good Reasons to satisfy you, why, tho' I grant private Subjects may judge of the Legality or Illegality of the King's Commissions, and also refuse to obey his Illegal Commands, and also that all publick Officers ought to take Care at their Peril how they act by, or execute such illegal Commissions; yet that it does not therefore follow that such illegal Commissions or Orders though executed upon the whole Body of the People, may be resisted by them; for all Limitation of the Royal Power being only voluntary, and proceeding from the meer Grace and Favour of our Kings, they are not compellable by Force, or resistable if they should impose their own Proclamations or Edicts upon us instead of Laws. For tho' I grant that the King hath no just, or legal Authority to act against Law, and that if he knowingly put any Subject to Death contrary to Law he is a Murderer; and no Prince can have any such Prerogative, as to commit open downright Murders either in his own Person or by those who act by Commission from him; But what follows from hence? That they may resist or oppose them if they do: This I absolutely deny, because God and the Law have commanded us not to resist; and I see no Inconsistency between those Two Propositions; That a King hath no Authority to act against Law, and yet that neither he, nor those commissioned by him though acting against Law, may be resisted. Both the Laws of God, and the Laws of our Country, suppose these Two to be very consistent.

S. C. R. p. 190.
S. demande.

For notwithstanding the Possibility that Princes may thus abuse their Power, and transgress the Laws whereby they ought to govern, yet they also command Subjects in no Case to resist; and it is not sufficient to justify Resistance if Princes do what they have no just Authority to do, unless we have also a just Authority to resist. He who exceeds the just Bounds of his Authority is liable to be called to an Account for it; but he is accountable only to those who have a Superior Authority to call him to an Account. No Power whatsoever is accountable to an Inferior; for this is a Contradiction to the very Notion of Power, and destructive of all Order and Civil Government. Inferior Magistrates are on all Hands acknowledged to be liable to give an Account of the Abuse of their Power, but to whom must they give an Account? Not to their Inferiors, nor to the People whom they are to govern; but to Superior Magistrates, or to the Sovereign Prince who governs all. Thus the Sovereign Prince may exceed his Authority, and is accountable for it to a Superior Power; but because he hath no Superior Power on Earth, he cannot be resisted by his own Subjects, but must be reserved to the Judgment of God who alone is the King of Kings.

F. In the first Place I deny (and I have sufficiently proved the contrary) that all Limitation of Royal Power proceeded at first from the meer Grace and Favour of our Kings; since the Crown of *England* has been from its first Institution limited by Laws, and the People have likewise always enjoyed a Right and Property in their Lives, Liberties, and Estates by the same Laws: But tho' you and I are thus far agreed, that the King hath no just and Legal Authority to act against Law, and that if he put any Man to Death, or take away his Estate contrary to it, it is Murder and Robbery; and likewise that the Subjects may be capable of judging concerning such Illegal Commands: But you will not allow, that if such a limited Monarch should send his Mercenary Forces to take away our Lives or Estates, or to Dragoon us till we

will

S. C. R. p. 55.

will own our selves of his Religion, that those Instruments of his Tyranny may be resisted; or that I have brought any Reason for it. Whereas if you had but attended better to my Discourse at our Third and Fourth Meetings, you might have remembered that I plainly enough proved to you, that God hath not given Princes, nor those commissioned by them, any Authority to Murder or enslave their Subjects; and your self then granted, *That every Man hath Power to defend his Life against him who hath no Authority to take it away*; which holds more strongly in our Constitution; where if the King give a Man a Commission to act contrary to the Law of the Land, it is altogether void, and the People may as well justify their Resistance of those Officers or Soldiers who should come to dragoon or persecute them, for professing the Religion established by Law, as if he had sent them downright to cut their Throats. And this being their Right by the Laws of God and Nature, whether God hath taken away this Right by an express Precept in the holy Scripture, I also examined at those Meetings. But whether any Municipal Law of the Land hath restrained us from it, I have also now considered and proved it contrary to the true Intent and Meaning of these Acts concerning the Militia. And therefore to say, that it is not sufficient to justify Resistance, if Princes do, or command what they have no legal Authority for, unless we can also shew an Authority to resist, is a Mistake; if by Authority you mean an express Civil Law for it; because such Resistance in absolute Monarchies is justifiable by that which is Prior to all Civil Laws, the Right of Self-Defence, or Preservation: And so likewise in limited Kingdoms, there is the same Necessity of defensive Arms upon a general Breach, or Violation of any fundamental Constitution of the Government, since it cannot be kept or maintained without such Resistance be allowed.

So that if the King hath no Authority to act contrary to Law, he cannot sure delegate that to others, which he had not in himself; and consequently such Commissions to persecute, or murder Men contrary to Law, being in themselves void, the Persons that execute them being no Officers, may be justly resisted, and the Resistance of such an illegal Act doth not at all derogate from his Sovereignty as King, since (as I told you before) that is limited only to the Performance of Legal Acts, and extends not to Illegal Orders or Commands. And as for the rest of the Reasons you give against this Resistance, *viz.* because he who exceeds the just Bounds of his Authority, is liable to be called to an Account for it, only by those who have a Superior Authority to do it; whereas no Power whatsoever is accountable to an Inferior: You do but impose upon me and your self the same Falacy which you have so often made use of, in making being accountable all one with irresistible, which are vastly different; and therefore your Conclusion is as false, that because the Sovereign Prince may exceed his Authority, and is only accountable for it to God, that therefore he cannot be resisted by his own Subjects; for he may be resisted, and yet be still unaccountable; those Two differing as much as Self-Defence does from Punishment, as I have more than once told you.

S. C. R.
p. 192, 193.

Al. I cannot rest satisfied with this Reply; for though I so far agree with you, that an Act without a Legal Authority carries no Obligation at all along with it, and therefore cannot oblige the Subject to Obedience. Now this is true, if by Obedience you mean an active Obedience; for I am not bound to do an ill Thing, or an Illegal Action, because my Prince commands me. But if you mean Passive Obedience, it is as manifestly false; for I am bound to obey, that is, not to resist my Prince when he offers me the most unjust or illegal Violence. Nay it is very false and absurd to say, that every Illegal is an Inauthoritative Act, which carries no Obligation with it. This is contrary to the Practice of all Human Judicatures, and the daily Experience of Men, who suffer in their Lives, Bodies or Estates, by an unjust or illegal Sentence. Every Judgment contrary to the true Meaning of the Law is in that Sense illegal; and yet such illegal Judgments have their Authority and Obligation, till they are rescinded by some higher Authority. This is the true Reason of Appeals from Inferior to Superior Courts, to rectify Illegal Proceedings, and reverse illegal Judgments, which supposes that such illegal Acts have Authority till they are made null and void by a higher Power; and if the higher Powers, from whence lies no Appeal, confirm and ratify an unjust and illegal Sentence, it carries so much Authority and Obligation

gation with it, that the Injured Person hath no Redress, but must patiently submit, and thus it must necessarily be, or there can be no End of Disputes, nor any Order or Government observed in Human Societies.

And this is a plain Demonstration, that though the Law be the Rule according to which Princes ought to exercise their Authority and Power; yet the Authority is not in the Laws, but in the Persons that Execute them: For otherwise, why is not a Sentence pronounced according to Law by a private Person, of as much Authority as a Sentence pronounced by a Judge? Or how doth an Illegal Sentence pronounced by a Judge come to have any Authority? For a Sentence contrary to Law cannot have the Authority of the Law. And why is a Legal, or Illegal Sentence reverfible, and alterable, when pronounced by one Judge, and irreverfible and unalterable, when pronounced by another: For the Law is the same, and the Sentence is the same, either according to Law, or against it, whoever the Judge be: But indeed the Authority of the Person is not the same, and that makes the Difference. So that there is an Authority in Persons, in some Sense distinct from the Authority of Laws, nay Superior to it; for there is such an Authority, as though it cannot make an Illegal Act Legal; yet it can, and often doth make an Illegal Act binding and obligatory to the Subjects, when pronounced by a competent Judge.

F. I think, notwithstanding all you have now said, your Distinction of a Supreme Authority in Persons, above and distinct from the Authority of Laws, will prove a meer Notion; for you grant that the King hath no Just or Legal Authority to act against Law, and that if he put any Man to Death contrary to it, it is downright Murder; but you will not allow, that if the King should thus murder never so many Thousands, either He, or those Instruments of Tyranny may be resisted; and therefore you would fain top upon me your old Distinction of an Active and Passive Obedience: The former of which I very well understand, but as for the latter, I have long since proved, that it is so far from being any Obedience, that it is indeed downright Disobedience, or a Refusal to do that which the Prince commands; so that truly your self have taught me to distinguish between the King's Personal Authority, and his Legal; for otherwise, why are you not as much obliged to yield an Active Obedience to the King's Personal Illegal Commissions or Commands, as to his Legal Ones, if there were no Difference between them? So then, all the Difference between us lies in the Measure of the Disobedience; you maintaining, that it is sufficient not to yield Obedience to such Illegal Commissions and Commands; and I, that besides this Denial of Obedience, (if it be in a fundamental Point, and that which generally concerns the whole Body of the Kingdom) that they may not only be disobeyed but resisted too, if forced upon us with Violence; and therefore all that you have said to prove that the Authority to which we are bound to submit, consists not in the Laws, but in the Persons, tho' acting contrary to Law; is even according to your own way of Reasoning altogether unconvulsive.

And farther, when you say, that it is false and absurd to affirm, that every Illegal is an Authoritative Act which carries no Obligation with it; I shall prove, that this Absurdity lies wholly on your Side. For 1. Legal and Authoritative, are all one in our Law; for that which is not Legal carries no Authority along with it; J. R. S. P.
15, 16. so that Illegal Authority is in plain *English*, unlawful lawful Power. Nor had K. Charles I. any such extravagant Notion of his Royal Authority, (who certainly understood his own Power better than you or I,) when he owns in his Declaration to the Long Parliament, Dated from Newmarket, 1641, *That the Law is the Measure of his Power*; which is as full a Concession of the Thing I affirm as Words can express; for if the Law be the Measure of it, then his Royal Power, or Authority (which is all one) is Limited by it. For the Measure of any Thing is the Limits or Bounds of the Thing Limited; and when it exceeds those Bounds it is an Illegal, and consequently an Unauthoritative Act, which carries no Obligation either Active or Passive along with it. So likewise in the said King's Answer to both Houses concerning the Militia, speaking of the Men by them named to him to be Commissioners for it; He thus replied, *If more Power shall be thought fit to be granted to them than by Law is in the Crown it self, his Majesty holds it reasonable, that the same be by some Law first vested in him, with Power to transfer it to those Persons, &c.* In which Passage it is granted, that

all the Power or Authority of the Crown concerning the Militia is by or from the Law, and that the King hath no more Authority than what is vested in him by the Law of the Land.

2. Your Argument from the Practice of Human Judicatures is also very fallacious; for you argue from the bare Abuse of a Trust, or Commission, with the Execution of which all Judges and Officers must be intrusted, to that which is quite of another Nature, (*viz.*) When the Person intrusted acts directly contrary to his Commission, or without any Commission at all; And therefore you are quite out in your Law, when you tell me, that an Absolute Illegal Judgment is Valid till it be reversed; for if it be apparently contrary to the known Forms of Law, and Practice of the Kingdom, it is so far from being Valid, that though it be put in Execution, it would be look'd upon as Null, and done without any Authority at all: As suppose the King in Person, or any Inferior Judge, should condemn a Man to die, either contrary to the Verdict of his Jury, or without any Jury at all; this is so far from being Authoritative, or Valid, that such a Judgment is Void in it self, and those are guilty of Murder, who execute it, and it will need no Writ of Error to reverse it. But I suppose by Illegal Judgments, you mean such Judgments which have some Error in them, either in Matter of Law, or Form, for which they may be reversed. I grant, if these should not be look'd upon as Valid, and hold good till they are reversed in a higher Court, there could not be any Judgment given at all, since all Human Judicatories whatsoever are subject to Errors and Mistakes; and there is sure a great deal of Difference between such Actions as are done by that Authority which the Law entrusts them with, though not duly exercised, and those violent and illegal Acts, which a Prince, when he persecutes, and enslaves his Subjects, performs by his wicked Instruments, contrary to all Divine and Human Laws: So that the Validity of such an Erroneous Judgment, is not from the Judge's Personal Authority, above the Law, nor from his Mistake or Ignorance of the Law, but from that high Credit and Authority which the Law hath given to all Courts and Judicial Proceedings; which if they are done in due Form, are to be taken for Law, however unjust, and must be presumed to be free from Error till they are reversed in some higher Court.

S. C. R. p.
176. & deinde.

M. But if you please better to consider of it, you will find a Necessity of owning a Supreme Power in the King beyond all Appeal, or Resistance, and that there must be a Personal Authority in him, Antecedent and Superior to all Civil Laws; for there can be no Laws without a Law-maker; and there can be no Law-maker unless there be one or more Persons invested with the Power of Government; of which, making Laws is one principal Branch; for a Law is nothing else but the publick and declared Will and Command of the Law-makers, whether they be a Sovereign Prince, or the People.

Ibidem, 197.
& deinde.

And hence it necessarily follows, that a Sovereign Prince does not receive his Authority from the Laws, but Laws receive their Authority from him: And I must be still of the same Opinion, notwithstanding *Bracton's* Words, which you before quoted, *Lex facit Regem*, the Law makes the King; by which I cannot believe that that great Lawyer meant that the King received the Sovereign Power from the Law; for the Law hath no Authority, nor can give any, but what it receives from the King; and then it is a wonderful Riddle, how the King should receive his Authority from the Law. And therefore I must stick to my former Interpretation, that when he says the Law makes the King, that is, it distinguisheth him from a Tyrant; as appears from the Reason he gives for it, *i. e.* *Non est enim Rex ubi dominatur voluntas, & non Lex*, he is no King that Governs by his Arbitrary Will, and not by Law; not that he is no Sovereign Prince, but he is a Tyrant and not a King.

And hence it as evidently follows, that the Being of Sovereign Power is independent on Laws; that is, as a Sovereign Prince doth not receive his Sovereign Power from the Law, so should he violate the Laws by which he is bound to govern, yet he is not to be resisted, much less doth he forfeit his Power. 'Tis true he breaks his Faith to God and his Country, but he is a Sovereign Prince still. And therefore it plainly appears that every Illegal Act the King doth, or Illegal Commission that he grants, is not an

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inauthoritative Act, or Commission, but lays on the Subject an Obligation to yield, if not Active, yet a Passive Obedience. And in the King's most Illegal Acts, tho' they have not the Authority of Laws, yet they have the Authority of Sovereign Power, which is irresistible, and unaccountable. In a word, it doth not become any Man, who can think three Consequences off, to talk of the Authority of Laws in Derogation to the Authority of Sovereign Power. The Sovereign Power made the Laws, and can repeal them, and dispense with them, and make new Laws. The only Power and Authority of the Laws is in the Power that can make and execute Laws; Sovereign Power is inseparable from the Person of a Sovereign Prince, tho' the Exercise of it may be regulated by Laws; and tho' the Prince doth very ill who having consented to such a Regulation, breaks the Laws, yet when he acts contrary to Law, such Acts carry a Sovereign and irresistible Authority with them, while he continues a Sovereign Prince.

P. I am very well satisfy'd, notwithstanding all you have hitherto said, that the Government of *England* owns no such thing as this Arbitrary Power with which you would invest the King; since I have already proved at our Fifth Meeting, that the King is not the sole Legislator, and consequently not the sole or Supreme Sovereign Power. So likewise our Law doth as little understand any such thing as a Personal Authority in the King, antecedent and superior to all Laws. For since God hath now left off making Kings by his own special Appointment, as he did among the *Jews*, every King must either be so by the Law or Custom of that Country, or else a bare Possession of the Throne is sufficient to make him so; and then every Usurper hath as much Right to a Crown as the most lawful Prince; and *Oliver Cromwell* was as Rightful a Prince as King *Charles II.* It is true, the first King of any Race could not be invested with the Crown by the same Law as his Successors are, that is, by an Hereditary Proximity of Blood; yet such a King, whenever he began to be so, could have no Legal Right, without the Election, Recognition, or Consent of the People. And as for an Hereditary Right, that is but a Right by the Law of the Land, or general Consent of the People, (testify'd by an uninterrupted Custom) to entail the Crown on such a Family; so that in either Case they are Kings by Law. And therefore I conceive it can be only in this Sense, that *Brañon* says, *Lex facit Regem*, i. e. The Law of the Kingdom makes the King; which more plainly appears, by what immediately follows, *attribuat igitur Rex Legi, quod Lex attribuit ei*, viz. *Dominationem, & Potestatem*; in which Words nothing seems more plain, than that the King ought to yield the like Dominion and Power to the Law, as the Law had given him before; or else how could *Brañon* call the Law (in the Place I have already cited,) the King's Superior? And if the King's Title to the Crown were not by Law, How came it to pass that the *Bruces*, for Example, had a better Title to the Crown of *Scotland* than the *Baliols*? But only that the Laws of *Scotland*, that is, the Consent of the States of that Kingdom, made them so; for otherwise any Man that looks upon the Pedigree of both those Families, will see, that *Baliol*, according to our Rules of Descent, was the nearer of Blood to the last King *David* than *Bruce*, and was so adjudged, upon a solemn Hearing, by our King *Edward I.* in Parliament. And as for *William*, whom you call the Conqueror, under whom all our present Kings do claim at this Day, he could have no just Right or Title to the Crown of *England* by Conquest, but by the Election, or Submission of the People, declared by them at his Coronation. And therefore that Law by which he was made King must be precedent, or at least concurrent with his being so; and upon whatever Terms or Conditions he then accepted it, his Successors are bound both by the Laws of God and Man to observe them. And therefore whatever you have built upon, or would infer from these Principles, is of no Force. And if the King be the sole Sovereign Power, that makes the Laws, repeals them, and dispenses with them when he pleases; I would be glad to know upon what Grounds so many of the Bishops and Clergy refused to read the King's Declaration of Indulgence; since certainly if he alone made the Laws, he also could dispense with them. But I shall say no more of these Points now, because they are not directly to the Matter in hand.

M. As for what you say concerning the King's not being the sole Supreme Legislative Power, I confess you and I have discoursed long upon that Point; and if I were thoroughly satisfy'd of it, I could much easier assent to what you have said; as also if you could prove to me, that the King received his Power from the People, and not from God, the Matter would be yet plainer; for then it would evidently appear, that the People might have reserved to themselves such a Right of Resistance as you now maintain; but that they never could have such a Power in *England*, from the Constitution of this Monarchy, I need go no farther than your own Instance of *William* the Conqueror, who owed all his Right to this Kingdom to the Power of the Sword, and not to any Hereditary Right, much less Election, or Confirmation of the People; as I think Dr. *Brady* hath proved beyond dispute, in his Learned Answer to *Argumentum Antinormanicum*. So that since we owe all the Rights and Liberties we enjoy to the gracious Concessions of our Kings of this *Norman* Race, we ought not in Reason or Gratitude to resist them, if they should sometimes encroach upon what we take to be part of those Liberties so granted; no, not if the King (who derives an Indefeasible Right to the Crown from the Title of the first Conqueror) should go about to take away all those Liberties, nay, our very Religion and Property too from us.

But I have not Time to pursue this Argument further now, and therefore shall leave it to another Opportunity.

F. As for what you have now said concerning *William* the First's having no Right to the Crown of this Kingdom, but what he owed to his Sword, is false in Matter of Fact; it being more than that Prince himself ever asserted or pretended to. And in the next place, As for your Doctor's proving him an Absolute Conqueror over the *English* Nation; supposing he had done it, (which yet I positively deny) yet will not this serve to do the Business for which the Doctor urges it, viz. to set up an Arbitrary, Irresistible Power in that King, and all his Successors; but may be urged against him to a quite contrary Purpose, as I shall shew you more at large, whenever you please to discourse farther upon that Subject. And as for all those things we call Legal, our Rights and Privileges, which you say were wholly granted us by the Charters of his Successors, I have already proved that to be false in Matter of Fact at our Fifth Meeting, where I shewed you that the *English* Nation had the same Liberties, (as to their Persons and Properties in their Estates, before your pretended Conquest) as they enjoyed afterwards; and that *Magna Charta* was but the Recital and Confirmation of our Ancient *English* Laws, as *Mat. Paris* affirms in the Place I here formerly cited. But admitting these Liberties and Privileges you mention had been owing to the Favour and Bounty of former Kings, yet can I see no Rebellion or Ingratitude the People of this Nation are guilty of, if they keep and defend them now they have them; but would rather betray a servile, base Spirit, if we part with them: For since it is a Maxim in Law concerning all Grants, as well from the Crown, as private Persons, that they ought so to enure *ut Res magis valeat, quam pereat*, i. e. that the Parties to whom the Grant is made, may not lose the Benefit of it, whenever the Grantor pleases; therefore it is also a Rule in such Grants, that they are still to be interpreted in favour of the Grantee against the Grantor; and also, that the Grantee shall not be left without some Means or Remedy of keeping and defending his Right against the Grantor whenever he goes about to take it away. Nor do I know any Exception there is for the King's Grants, more than those of private Subjects; since both

Bract. l. c. 8.
Fleta. l. 1.
c. 17.

Bract and *Fleta* tell us, *non debet esse Rege major in Exhibitione Juris, minimus autem esse debet in judicio suscipiendo si petatur* (which I take to be the true Reading of that Place, and not *peccat, parcat*, or *petat*, as divers Copies have it.) That is, as the King is the greatest in distributing of Right or Law to his Subjects, so ought he to be no more than the least of them in submitting to right Judgment, if he be petitioned to, and that it be required of him, (either of which Senses this Word will well bear); but if he absolutely refuses to do this, and will take away their Rights and Liberties by Force, and will deny them the Benefit of the Laws, What other Remedy is there left them but a general Resistance? Since otherwise the King may alter the Government, and take away all our Legal Rights and Liberties whenever he pleases.

M. I confess, this Dispute concerning the Resistance of those commissioned by the King, and the King's being the sole Legislator and Original of all the Civil Liberties and Privileges we now enjoy, hath carried us from the main Points in this Question: Pray therefore, satisfy me (if you can) those great Objections I have made: First, how this Resistance can consist with that Sacredness and Inviolableness which you your self suppose to be due to the King's Person: For either this Resistance, in case of an Invasion of our Civil Rights, must be made even when the King's Person is actually present, to back those illegal Commissions; or it must be forborn, out of that due Reverence and Care of his Royal Person which the Law enjoins. If the former, the King's Person is in Danger to be destroyed, whenever a factious Party is strong enough to rise in Arms, and oppose the King's Commissions, upon pretence of their being against Law: But if, on the other side, this Resistance is not allowable when the King's Person is present, then all such Resistance will signify nothing; since as soon as ever the King in Person shall appear in the Field to back his Commissions, all your Defensive Arms (as you call them) must be immediately laid down, unless they mean to destroy the Sacred Person of the King: So that take it either way, all Resistance is either illegal, or else unpracticable. Secondly, I can as little understand (as I told you before) how the Two Houses of Parliament should renounce all taking up Arms, as well Offensive as Defensive, against the King for themselves, and yet should leave a Power in the diffusive Body of the Nation, nay, in any Part thereof, strong enough to make a Rebellion, which they thought unlawful to exercise themselves. Lastly, By what Legal Authority the People, or any Part of it, can justify the taking up even Defensive Arms; since you your self acknowledge, that no Arms can be taken up regularly, but by the King's Authority: And you have also disclaimed all taking up of Arms by his Authority against his Person, or against those Commissioned by virtue of such Authority; tho' I confess, you except the Cases of Self-defence, and in Maintenance of the Law; yet I cannot find those Exceptions allowed of in any of our Law-Books, either Ancient or Modern.

F. I hope to give you such Satisfaction to every one of these Objections you have made, as may serve any indifferent Person. Therefore, as to the first, concerning the Sacredness of the King's Person, which I allow of as well as you, we must, in the first place, distinguish between such Commissions as the King issues by Colour of Law, when the Judges, for Example, had given their Opinions in the Case of Ship-Money: For they being the sole Interpreters of the Law in the Intervals of Parliament, I do acknowledge that their Determinations are not to be opposed by Force, but legally reversed when the next Parliament meets; and they are then to answer in Parliament for their false Interpretations and Opinions, as *Tresilian* and his Companions did in the 11th of *Richard* the 2d. and as the Ten Judges did upon the Two Houses Declaration against Ship-Money, and their Impeachment thereupon. Thus, though *Mr. Hampden* refused to pay Ship-Money when demanded of him, and rather chose to lie in Prison than pay it; yet it had been downright Rebellion, in case any Resistance had been made by him against the levying of it: But had this Tax been laid by the King's sole Power without such Colour of Law, I doubt not but Resistance might have been made even against those that were Commissioned by him to levy it; and if any one Town or Hundred were not strong enough to seize such Officers as presumed thus to levy it against Law, the *Sheriffs* of every County in *England* might have raised the *Posse Comitatus*, and seized all such Offenders, and carried them to Goal; since the King's Commissions never did, nor can indemnify the Persons so Commissioned, in case the Thing they were about to execute was contrary to Law. And for this, I need go no farther than the Old *Mirror of Justices*, which is owned for good Law at this Day; which, speaking of Robbery, and the several Kinds thereof, has this Passage, which I shall here render out of the old *French* Law: *Into this Offence (viz. Robbery) all those fall, that take other Mens Goods by Commandment of the King, or any great Lord, without the Owner's Consent.* Where you see there is no Difference at all made between those that took away other Mens Goods by the Command of the King, or any other; but it was Robbery in all of them alike, and consequently the Actors might be alike seized and punished as Robbers. The same is also allowed by the Statute of the 20th of *Henry* the 6th, whereby the King's Purveyors are forbid to take any thing to the Value of 40 s. or under,

Chap. 1.
Sect. 10.

Chap. 8.

without

without ready Payment in hand, of any Person; and that it then should be lawful for every one of the King's Liege-People to retain their Goods and Chattels, and to resist such Purveyors and Buyers. So likewise the last Clause in this Oath you so much insist upon, *viz. in pursuance of such Military Commissions*, seems to restrain to such Commissions as were granted by the King's Authority; that is, according to Law, and no other.

So that you see, by the Old Law of *England*, the King's Commission did not render any Man irresistible, unless he executed it according to Law: Since the Constable of each Town might raise the Inhabitants thereof, to seize such Wrongdoers; and if they were not strong enough, the High-Constable of the Hundred might raise the whole Hundred; and in case they were not sufficient, the High-Constable might crave Aid of the Sheriff, and assemble all the several Hundreds of the County till these Malefactors were seized. So that as long as there were no standing Forces kept up in the Nation, (as I have shewn you there was not till the Reign of King *Charles* the II^d.) there could never be any Clashing between the King's Civil and Military Commissions. And this is one great Reason why no King of *England*, since the *Act de Tallagio non concedendo*, was so hardy as to issue any Commissions to levy Money without Colour of Law; because they knew they were void in themselves, and consequently would be resisted by the whole Nation. So that this would not have been taking up Arms by the King's Authority against those Commissioned by him, but only in order to bring those to Justice who had not any Commissions at all to do what they did; the Law taking no Cognizance at all of the King's Personal Commissions, when absolutely against Law.

Nor, if the King had joined his own Presence to such illegal Commissions, would it have mended the Matter, or rendred these Robbers of other Mens Goods any more irresistible, than they were before; since the King can give no Man Authority to do that, which he has not Power to do himself: And therefore since his single Person may be resisted, in case he go about to Ravish, Rob, or Murder People; then sure his joining himself with such Men, tho' never so numerous, can never make him more irresistible than he was; unless you will suppose, that the King may not rob or commit Murder with a few without Resistance, but may justify the doing of it with an Army: And if so, pray tell me, what Number they must be to render the King, and all those with him, thus irresistible? And therefore it is no wonder, if our Law has made no express Provision for resisting the King's Person, since it had so high a Regard for his Honour, as not to suppose he could be guilty of making War upon his People: But if the King shall be among such wrong Doers, either by Force or Fraud, the Case will be otherwise. Thus, when King *Edward* and *Richard* the II^d. joined their own Presence to the illegal Actions of the Two *Spencers*, and *Robert de Vere*, Duke of *Ireland*; yet the Nobility and People took no notice of that, but prosecuted them, notwithstanding the King's personal joining himself with them: And *Thomas* Earl of *Lancaster*, tho' he had the worst of it in such a War, and was taken and executed, yet was his Attainder reversed in Parliament, as I have already said, and his Quarrel with the *Spencers* declared to be good and just. As the like Resistance was also declared to have been for the Safety of the King and Safeguard of the Realm, in the Parliament of the 11th of *Richard* the II^d. wherein the Duke of *Ireland*, and the rest of his Faction, were condemned, as I have already shewn you: And tho' I grant, that in such a Division between the King and his People, his Person may run a great Hazard; yet it is his own Fault, and not theirs, if it so fall out; and they are not to lose their Lives, Liberties and Properties, in case the King will fully join himself with Murderers or Robbers, since this is not to resist Royal Authority, but illegal Force, without any Authority at all; and if he will thus expose himself to the Mercy of blind Bullets, Charge is to be given to all not to kill him wilfully or wittingly, since we are never to despair of his Repentance, till he absolutely renounces all Reconciliation with his People: And thus, even in the midst of such a Resistance, the King's Person may be as safe as he can be, in such Circumstances, though not so safe as if he were in his own Palace. But if an Army of wicked and lawless Men must not be resisted, because they have got the King's Person on their side; then Prince *Edward* (afterwards King *Edward* the Ist.) could not have justified his fighting with *Simon Montford*, and those of his Faction, who had, as you your self acknowledged,

got the Person of King *Henry III.* into their Power, and acted all things in his Name, and by his seeming Authority ; as the Historians of those Times expressly tell us ; and the King being in *Montfort's* Army at the Battel of *Evesham*, was in great Danger, being then wounded in the Neck with an Arrow : So that if this Oath had been then to be taken in this Sense, this rescuing of the King by his own Son out of the Hands of these wicked Counsellors, had been taking up Arms by his Authority against his Person.

M. Pray give me Leave to answer this Instance you have now brought, because I think it does rather make against, than for your Opinion. I grant Prince *Edward* might well justify his fighting with *Simon Montfort*, tho' he had the King's Person then in his Power, because the Prince very well knew that his Father was carried about with them as a Prisoner against his Will ; and therefore ought to release him, tho' with some Hazard to his Person ; since it could not be otherwise brought about. But sure there is a great deal of Difference between fighting to release my Prince, when made a Prisoner against his will, and fighting against him to take him away from Evil Counsellors, whether he will or not ; as the Long Parliament did against King *Charles I.* tho' they knew he was in the Head of his Army with his own Content ; and this was sure taking up Arms by the King's Authority against his Person, and is that which is to be expressly disclaimed by this Oath ; and will be also treasonable, if done in any Case whatsoever, where the King shall think fit to be at the Head of his Forces, whether the Thing be lawful or unlawful for which they are raised.

F. Well then, it seems the Fear of endangering the King's Person is nothing, if the End for which it be done be lawful. And why it may not hold in other Cases as well as this, I can see no Reason. I grant, that what the Parliament did was unlawful, because the Occasion of the War began on their side, as it was then said ; but supposing the King made War upon the People, I doubt not but the Case had been otherwise. And for Proof of this, pray give me Leave to put you a Case which may well happen, now we have a Standing Army distinct from the Militia : Suppose that in a Suit with a great Favourite of the King's, a Man recovers a House and Lands against him by a Judgment at Law, and he also by Course of Law put into Possession thereof by the Sheriff ; afterwards the King's Commission is obtained by the Interest of this Favourite, to command an Officer and some Companies of Soldiers of the Standing Army, to take Possession of this House, and deliver it back to the Person who first had it. The Man in Possession being a stout and powerful Person in his Country, hearing of it, resolves to maintain the Possession of his House according to Law ; and therefore gets in good Store of his Tenants and Neighbours to defend it. The Officer comes with his Soldiers and summons the House : They within refuse to yield up the Possession ; whereupon an Assault ensues, in which a great many are killed. The Man in Possession is by the King's Command indicted for Treason or Murder, for fighting against those commission'd by the King. Now, pray tell me, Whether the Judges ought, according to their Oaths, to direct the Jury to find this Man, and those of his Party, guilty of the Crimes above-mention'd, or not ; and whether the Officer and his Soldiers are not rather to answer for this Offence.

M. Truly, I cannot deny but this Military Commission to put a Man out of his Freehold is illegal, and consequently void, and so may be resisted ; since I know the Law says, That a Man's House is his Castle, and he may justify the Defence of it against all Subjects whatsoever : But what is this to resisting the King's Person, who was not there ; for if he had, I doubt not but this Person ought to deliver it up to the King, rather than endanger his Majesty's Sacred Person : Nor is this Resistance considerable, it being only in a particular Case, which can no way by a general Rebellion alter this Government over the whole Nation.

F. You speak agreeable to your own Principles. Well, but suppose the King should be persuaded by some very ill Men about him to play this or the like Trick, whenever he had a Mind to favour one Party more than another, and so should hinder the Execution of the Law whenever he pleased ; Can you think the Nation would long endure this, without any Resistance ? Or suppose, to make the Case more general, the King should undertake to lay a Tax upon the whole Nation, without Consent of Parliament, and fearing it should not be levied, should resolve to do it by his Officers and Soldiers of his Standing Army ; and

lest they should be resisted, should march with them in Person from one County throughout to another to see the Money raised : Do you think the whole Nation, out of pure Deference to the King's Person, were bound to permit him to do whatever he pleased, and let the Soldiers take this Tax, which they were certainly not obliged to pay, had he not been personally there ?

M. Yes, I am of that Opinion that they ought ; for it were better to pay it, than that a Civil War should happen about it, in which the King's Person, as well as the Government, may be destroy'd.

F. I see you are of this Opinion, because you fancy that the whole Government consists in the King's Person alone, which it does not ; but in the Legislative Power, which is not in the King alone, but in the King together with the Lords and Commons assembled in Parliament : Therefore you are mistaken in supposing that this Resistance must needs alter the Frame of the Government, since it is undertaken to maintain the fundamental Constitution of it. For if the King may take what Money he pleases from the People, and make what Laws he will without the Parliament, and without supposing it lawful to resist him if he does, the Fundamental Constitution of this Kingdom will be but a Jest, considering how light some Princes make of their most Solemn Declarations to their People ; nay, their very Coronation-Oaths now-adays. And it is a strange Paradox, that one Man may defend his Life and Property against the King's single Person, in case he go about to rob or murder him ; and yet that a whole Nation should not have the like Right ; and that a Prince may not rob or murder Men by himself, yet may do it without any Resistance, in case he can raise an Army to back him.

M. Let what will happen, I am for understanding this Oath and Declaration in the strict literal Sense ; which you, by your false Glosses, go about to destroy ; therefore to tell you plainly my Mind, I think, neither one single Person, nor yet the whole Nation, can justify Resistance of the King's Person ; no, tho' he should go about to rob or murder me, it were better I were killed, or lost all I had, than that the sacred Blood of my Prince should be shed by my Hands. Since the whole Parliament have on behalf of the People actually renounced all defensive Arms against the King, (by which I suppose they mean all defensive Arms against his Person.) Nor have you as yet answered my two last Objections, concerning that Renunciation of the Two Houses, and the want of a competent Authority to raise the Arms of the whole Nation, in case of that which you call a General Invasion of Mens Religion, Liberties, and Properties, if ever any such thing should happen, as it is not likely it ever will.

F. Your Principles and mine are so diametrically opposite, that it's no wonder we may draw quite contrary Conclusions ; for whereas you suppose that Nations were made for Princes to govern and dispose of at their Pleasure, without any Resistance on the Peoples side, let them do what they will ; I suppose that Princes are made for the common Good of their People ; and where their Happiness and Preservation do not interfere, ought inviolably to be preserved ; but when through the Folly, Negligence, or Tyranny of Princes, that which was ordained for their Protection, proves their Ruin and Destruction ; I think the Preservation of the Prince's Person ought to give place to the Publick Good ; and better that he, than that the whole Nation should perish. Which tho' it was the Opinion of *Caiaphas*, in relation to our Saviour, yet it is so well approved of, that it is said by the Evangelist *St. John*, that he spake not that of himself, but being High-Priest that Year, he prophesied. For there may be a Civil Government without a King, but there can be no King without a People. Of this Opinion our *English* Ancestors always were ; who, though they often resisted, and sometimes deposed their Kings, they still maintained Kingly Government, tho' with the Change of the Person. And if it fail'd in the last Civil War, it was because it was at last managed by a Faction of Men of quite different Principles both in Religion and Politicks, and not by the Nobility and Gentry of the Nation, whose Interest it was, and ever will be, to maintain the ancient Government of a limited Monarchy, without falling into a Commonwealth, or giving up their just Rights and Liberties to an Arbitrary Power.

But

But to answer the rest of your Objections, which, if what I have already laid down be Law and Reason too, may be easily done. As to the first Objection, the Two Houses might very well renounce the Power of making any War offensive or defensive against the King, and yet leave the Right of Resistance for Self-Defence and Preservation to the whole Nation in general; since the former was necessary, unless they would have asserted a Right in themselves of sitting whether the King would or not, and waging a War against him whenever they pleased, after he had actually dissolved them; which would be to set up Two equal absolute Powers at once in the Kingdom. But that they did not renounce it for the whole Kingdom, is plain; for though by the Statute of the 12th of *Charles II.* they disclaim all coercive Power over the King's Person for themselves and the People, either collectively or representatively, yet do they neither there nor in any of these Acts for the Militia, renounce all defensive Arms for the Defence of their Religion, Liberties, and Properties; there being a great deal of Difference between such a Defence, and a coercive Power over the King, as I have already sufficiently proved; nor indeed was it in the Power of the Parliament to have done it if they would, since they are but Trustees for the People to preserve their just Rights, and had no Power wholly to give up their Religion, Lives and Properties to the King's Mercy. So that this Renunciation of all defensive Arms on the Behalf of the whole People, had been absolutely void in it self: And since it would have render'd the Legal Constitution of the Government of this Kingdom absolutely precarious, if notwithstanding the Illegality of the King's Commissions, and their being void if granted to illegal Purposes, the King's Presence shall render it downright Treason to resist them. And if this be so, the last Difficulty will be easily answered, *viz.* By what Authority or Commission the People may make this general Resistance? To this I say, that in the first Place all Commissions granted to Persons uncapable by Law to take them, or for illegal Purposes, are to be supposed to be issued contrary to the King's Will and Knowledge, and therefore are to be look'd upon as void in Law; and consequently the Persons not to be commissioned at all, and so may be resisted by the King's legal Officers all over *England*, as I have already proved: But if once the King should countenance and abet such Robbers by his own personal Presence, this Resistance may then be made, and justified by the whole Nation, not by the King's Authority against his Person, but by another higher and precedent Right, *viz.* the Right of Self-Defence, and the Common-Safety of the whole Nation; which the People must have reserved to themselves at the first Institution of the Government, or else all Monarchies would be alike, and their would be no difference at all between absolute and limited Kingdoms.

M. I shall not trouble my self about other Kingdoms, but this much I firmly believe, that our Kings are absolute Monarchs, notwithstanding they have limited themselves by Law to the Manner of their Administration of these grand Essentials of Government, the making of Laws, and raising of Money: So that since the Supremacy of the Government is still in themselves as God's Vicegerents here on Earth, and not as the People's Deputies, I cannot but still understand this Oath in the strict literal Sense in which I am confident this Parliament meant it; and therefore since they have expressly declared the Law to be so, I will not be wiser than the Law; especially since it is most agreeable to the Scriptures, and the known Doctrine of the Church of *England*, that the King's Person is not only unaccountable but irresistible too upon any Pretence whatsoever; and I think I am able to shew you, that it is much better for this Nation, or any other of a like Constitution, to suffer the worst that may happen from the ill Government, nay Tyranny of our Kings, than to involve themselves in Blood and Confusion by Rebellion and Civil Wars, as often as the People shall judge, though never so falsely, that their fundamental Rights and Privileges are forcibly invaded by the King.

F. I think I have very expressly proved at our 5th Meeting, and that from undoubted Testimonies from our ancient Histories, and Writers of the Laws of *England*, as also from the whole constant Tenor of the Statute Law of this Nation, That the Kings of *England* are not limited by their own Concessions, in the Manner of the Administration of their Sovereign Power, but

from the first Constitution of the Government : And if the King be not the sole Supreme Legislative Power, I care not what some Divines have writ to the contrary ; and since it is a Law-Question, the supreme Authority alone ought to decide it. And therefore it is no Matter in this Case, what the Scriptures say, nor yet the Church of *England* ; the former hath not, and the latter cannot determine what is the legal Constitution of the Government in this Nation, and where the supreme Power resides. And therefore suppose it to have been the Intent of this Parliament, never so much to bar all Resistance of the King's Person in any Case whatsoever, yet I am sure it was not in their Power to do Things absolutely inconsistent and contradictory in themselves, as they must have done had they made the Persons of all Officers, however commissioned by the King, absolutely irresistible ; and much more if they had indued the King's Presence with an absolute Power, in Order to countenance their Commission, the most violent and illegal Action ; and yet have supposed they had thereby altered nothing in the Constitution of the Government, though they had rendred it instead of a limited, an absolute despotick Monarchy, which as I am not yet convinced it was in their Will, so neither was it in their Power to grant if they would : And therefore as I do not desire to be wiser than the Law, so I cannot allow this to be any Law at all in the Sense you would put upon it. So that make the most of it, this was but the unwary Declaration of a Parliament of very young or biassed Men, not long after the King's coming in, who through the great Abhorrence they had of the late Civil War raised by the Parliament, under Colour of the King's Authority, were drawn in before they were aware, to be a little too free in their Expressions, not considering the Consequences that might follow : But when this fond Fit was over, and that a standing Army had been raised in *England* under pretence of the *Dutch* War, and that the King had by his Declaration of Indulgence made some Approaches to an Arbitrary Power, and in order thereunto, would in that very Parliament in 1675. have imposed this very Oath or Test, not only upon those who were to take it before, but upon all Peers and Parliament Men before ever they sat in the Two Houses, as also upon all Officers in Church and State, to the very Justices of Peace ; so that the Disguise being now seen through, it made divers of the Peers, even those of greatest Loyalty and Wisdom, stiffly to oppose the laying this Test upon all the Clergy, Nobility and Gentry of the whole Nation, as it was then the Design of the Court-Party to have done : Which vigorous Opposition, tho' in the smaller Number, yet met with such good Success, that the Bishops and Lords of the contrary Opinion, could not then carry it ; and the Eyes of the whole Nation were afterwards so much opened, that the King durst never offer this Test any more to either of the Two Houses. So that if you will but consider this Matter of Fact, how this Test was first obtained ; and how afterwards, when it was thought to be intended to set up Arbitrary Power, was also as vigorously opposed by them ; and their being sensible that the Parliament had gone too far already in doing what they had done ; I think none can take this Oath in your Sense, except those Clergymen, who will allow none to be of their Church, but those who are for this Passive Obedience ; according to their prejudicate Notions of Loyalty, or else some few mercenary Lawyers, who, in Hopes of Preferment, (which they can never otherwise obtain) would interpret this Oath in such a Sense as would make us all Papists and Slaves too, whenever the King has a mind to it. Now which of these Extremes are worst, that the People should judge for themselves (tho' perhaps erroneously) when the King, or those acting by his illegal Commissions, shall violently assault them in their Religion, Lives, Liberties and Estates, and thereupon they make Resistance with one Consent, when they find themselves brought to this Extremity ; or else that the King should be thus invested with an irresistible Power of doing whatever he pleased with us ; I durst leave to any indifferent Person to judge.

M. I confess you have told me more concerning the History of this Oath, than ever I knew before, but let the legal Sense of it be what it will, and setting aside the Precepts in Scripture for absolute Submission without any Resistance, I think I am able to prove from your own grand Topick of the common Good and Preservation of Mankind ; that it is much better to submit to the worst, and greatest Tyrant that ever was, than to resist him, if he be our lawful Prince ;

for

for if you consider what is the Subject of all Human Happiness and Contentment, it is certainly Life ; now what Tyrant ever in his whole Reign destroyed so many Mens Lives by Force, or unjust Prosecutions, as a Civil War, if carried on with Violence and Animosity does in a Year's Time ? So vast a Difference there is between the Evils of Tyranny and Rebellion, and so much is the Remedy worse than the Disease ; the Cruelty of a Tyrant (says one) is like a Clap of Thunder, it strikes with great Terror ; but Civil War is like an Inundation, it sweeps away all before it, without Noise : Thus one Man brought to the Scaffold by the Arbitrary Command of a Tyrant, makes more Noise than Ten Thousand killed in the Field in a Civil War ; but that does not make it the less, but the greater Evil, while we are made willing to destroy our selves, and do it more effectually in one Day, than the bloodiest Tyrant could find in his Heart to do in his whole Reign : All the Men put to Death by the Arbitrary Commands of Tyrants since the beginning of the World, in all the Kingdoms of it, will not amount to half the Number of those who have perished in the *Roman*, or *English* Civil Wars. So much safer are we in God's Hands than in our own, and in theirs under whom God hath placed us. And though he often makes them like the Sun and Sea, (tho' highly useful in themselves) Scourges for our Sins, yet he has promised to keep their Hearts in his Hand, and to turn them as seemeth best unto him ; we have more Promises of Safety there, than when we are delivered over to the Beasts of the People, whose Madness *David* compares to the Raging of the Sea.

Vid. An Answer to Dr. King's State of the Protestants in Ireland, p. 32.

Psal. 98. 30.

In short, The strict Restraint of the People by Government, is their truest Liberty and Freedom ; since if they were at Liberty from Government, they would be exposed to Combat one another ; which would be worse than the greatest Slavery in the World : The great Mistake is in the foolish Notion we have of Liberty, which generally is thought to consist in being free from the Lash of Government, as School-boys from their Master, and proves in the Consequence only a Liberty to destroy each other ; and yet it is for such a Liberty as this, that Men most commonly begin Civil Wars, and fall a cutting of each others Throats. Therefore, though I grant it were much better for all Princes to let their Subjects live happily, and enjoy a competent Share of Ease and Plenty ; yet on the other Side, if they will not permit them so to do, but will tyrannically oppress them, it were much better for them to sit down contented with Poverty, nay, Slavery it self, rather than to destroy so great Part of a Nation, as may be lost in a Civil War, whenever it begins. Thus even the Poet *Lucan*, though of *Cato's* Party, reckoning up the Miseries of the Civil Wars of *Rome*, which were all for Liberty, as if envying the happy Condition of those who lived under absolute Tyrants, cries out,

*Felices Arabes, Medioq; Æaque Tellus,
Quos sub perpetuis tenuerant Fata Tyrannis.*

I could give you Instances of the Truth of this in most Nations, enough to make a History : And if such a History were written, of the Mischiefs of this false and pretended Liberty, and Good of the People, I durst undertake the Comparison, that more visible Mischiefs come upon the People, more Destruction of the Publick Good, and greater Loss of Liberty and Property by this one Method, than by all the Tyranny and Violence of Mankind put together ; and consequently, that there is no Comparison 'twixt the Evils of Tyranny, and of a Civil War for Publick Good ; and that the Mischiefs on this Pretence of Publick Good, are infinitely less tolerable, and a more Universal Ruin to the People, than any Tyranny of lawful Governors, that ever was in the World ; whereas this is by many Degrees the 'greatest, and most lawless Tyranny, and always brings greater Mischiefs along with it, such as Confusion, Rapine, Violence, Contempt of all Laws and Legal Establishments, with more intolerable Evils of all Sorts, than those it pretends to remedy.

But of all Pretences for Rebellion, Religion is the most ridiculous ; since a Man's Religion can never be taken from him, or a false one imposed upon him, whether he will or not ; and also because a Civil War introduces greater Immorality, and more loosens the Reins of Discipline, and is more contrary to the Spirit of true Religion, than any other Thing in the World : True Religion is

not propagated by the Sword, it is a small still Voice that cannot be heard in War ; War confounds it, and debauches it. The most profligate, and licentious Court, bears no Proportion in Wickedness to the Lewdness, Blasphemy, and Contempt of all that is Sacred, which reigns and overflows in Camps. It was an old and true Saying, *Nulla fides, Pietasq; viris, qui Castra sequuntur.*

P. I see when neither the Scripture nor the Law can justify your absurd Doctrine of Passive Obedience ; then you fly back to your old Topick the Law of Nature, and common Good of Mankind : I allow your Principles, but not the Deductions you draw from thence, which are indeed but Paralogisms, as I will shew you by and by ; but I see there is nothing so false and absurd, which Prejudice and Education will not make Men swallow : I confess, you have made a long and ingenious Harangue in Commendation of the Benefits of Tyranny and Slavery ; which had you done only for an Exercise of your Wit, I should have ranked it with *Cardan's* Panegyrick of *Nero*, and in Praise of the Gout ; but if you vent such Notions in good earnest, I cannot forbear shewing you the Absurdity of them.

First, therefore, admitting what you say for Truth, that a Civil War does destroy more Men in one Battel, than the greatest Tyrant hath ever done in his whole Reign ; Is this an Argument that no Man may defend either his Life or Liberty against Arbitrary Power ? If this were true Reason, it were the greatest Folly in the World for the *Poles*, or any other Nation that are at Wars with the *Tartars*, ever to resist them ; for their Emissaries might thus make use of your Argument to make them submit to them : Life is the only State of Happiness in this World, and without which nothing can be enjoyed : It is therefore better for you to be made Slaves than to venture a Battel ; for in the Fight God knows how many of you may be destroyed ; whereas, if you quietly submit, we promise to hurt none of you, we will only carry you away, and sell you for Slaves, and sure Slavery is better than Death ; for even Slaves enjoy a great many Comforts of Life, though with some Hardships ; and you may be redeemed again, or make your Escape ; but Life once lost can never be recovered. The same Argument a Tyrant may use for the Exercise of his Arbitrary Power over Mens Lives ; that he will not (nay, cannot) destroy the whole Nation, but only use them as Butchers do their Sheep cull out the fattest, and let the poor Ones live, thrive and grow fat, till they are likewise ready for the Knife. This perhaps may be a proper Life for those Beasts that cannot live without Man's Protection ; but what Man of any Courage or Sense, would be willing to live under a Government where his Poverty was to be his only Protection ? Who would not venture his Life in one brisk Battel, rather than live in such a vile and slavish Condition ? And who would not rather argue thus ; It is great odds, if among so many Thousands, I am the Person ordained for Death ; or if I am, I may perhaps purchase Victory for my Countrymen, and Liberty for my Posterity ; but let the worst happen, I venture my Life for the Publick Good ; and it is better once to die, than always to live in fear.

But if the Calculation of the Number of Men's Lives that may be lost in the Recovery, or maintaining any Right whatever, should be the only Rule to render War either reasonable, or lawful ; I doubt whether most of the Wars Princes make for small Territories, or Punctilio's of Honour ; (as lowering the Flag, for Example) nay, even for the Recovery of their Crowns, when unjustly detained or taken from them, can upon your Principle ever justify either Princes in Conscience to make such Wars, or oblige Subjects in Prudence, (according to your Rule of the Publick Good) to fight in such Quarrels ; since none of them but often cost more Lives to defend, or regain them, if lost, than the Things are worth that the Princes of the World usually make War about, against each other.

But if you tell me, that Men are bound by the Law of God, and of their Country to assist their Prince in any Wars he shall Command them, without enquiring into the Consequences of it ; and let what will happen as to the loss of Men's Lives, Estates or Liberties, that we are likewise to obey and submit to lawful Princes ; because, let them tyrannize, enslave or destroy us never so much, yet God has put us into their Hands ; and we are safe in God's Hands whilst we are in theirs : This is all a meer Falacy, for what is this to your main Argument from the Destruction of Mankind ? For, if so many Men are to lose their Lives

in the War, what Difference is it as to them, whether the War be made by a lawful or unlawful Power? It is still upon this Principle unlawful to be made, and consequently unlawful to be fought for. And if you once grant that Princes may tyrannize without Resistance, kill or enslave any of their Subjects; What Difference is it, as to the People that are to suffer it, whether he be a lawful Prince, or a Tyrant or Usurper that does it? For as for being delivered by God into the Hands of a lawful Prince to be dealt withal as he shall think good, it is all meer Jargon: Pray prove to me (if you can) that whilst a Prince thus tyrannizes, oppresses, and enslaves his People, that God ever thus deliver'd the People into his Hand for that Design; or that whilst he does so, he acts as God's Minister. This I have urged you to prove at our Fourth Meeting; but since you could not do it, I take the Case for desperate.

But to answer your Comparisons of the Sun and Sea, to which you compare lawful Princes that turn Tyrants; they are as easily retorted upon you: If the Rays of the Sun are too hot, we may resist or avoid them, and put on thicker Cloaths; or set up Shelters to defend our selves from them: The like we may say of his malignant Influences or Effects upon Men's Bodies, could there be any Means found out as easily to avoid them. So likewise for the Sea; suppose the breaking in of it upon any Countrey to be sent by God for their Sins, you will not say it is unlawful for the People to make Banks or Dikes, or use any other natural Means to keep it out, or to drain it away. And the Case is the same as to Tyranny; for if Resistance be as natural a Means against it, as these I have mentioned are against the too violent Heat of the Sun, or breaking in of the Sea, I cannot see why we may not as lawfully exercise it. But since we are talking of Waters, this puts me in mind of the Place you have now cited out of *Proverbs*, *That the Heart of the King is in the Hand of the Lord*; which without doubt is a great Truth; but then you should have added what immediately follows; *as the Rivers of Waters he turneth it whithersoever he will*. Now, How does God turn Rivers of Waters? It is not by any supernatural Means, but either by a strong Wind, or else by the Hands of Men. Therefore *Solomon's* Comparison of God's turning the Hearts of Kings like Waters, is but an Allusion to the Custom of those *Eastern* Countries, that as a Gardiner draws the Streams of Water through the Trenches he cuts, into what Part of the Garden he thinks good; so doth God turn the Hearts of Princes to act, or do quite contrary to their first Intentions; nay, to what they have actually done before. But, How is this performed? It is only as he makes use of the Gardiner to turn the Streams of Water: It is wholly by human Means, such as Advice of good and wise Counsellors, and a prudent Consideration upon it; to which also may be added, the Resistance of their Subjects, when after all Remonstrances and Intreaties to the contrary, Princes still go on outrageously to oppress them; when they see they will no longer bear it, and find themselves engaged in a troublesome War with them, they then see their Error, and send to their Subjects and offer them Terms of Peace. Thus divers of our Kings Hearts were turned; when they saw the Nation would all, as one Man, resist their tyrannical Arbitrary Proceedings, they came to Terms with them, and granted them *Magna Charta*, and other good Laws, for the Security of their just Rights and Liberties. But as for what you say of our being safe in the Hands of Tyrants, as being in God's Hands; I grant we are still in God's Hands even when we fall under the Power of Thieves and Robbers. But is our Safety then so great, as when we are out of their Hands? Or, may we not get from them by Force, if we are able? Especially if what *Bracon* tells

Vid. Dr. Patrick's *Paraphrase and Annotations on this Text.*

Cap. i. f. 107.

us be true, in these Words in his Third Book, *Exercere igitur debet Rex potestatem juris sicut Dei minister, & Vicarius in Terrâ, quia illa potestas solius Dei est; potestas autem injuriæ Diaboli non Dei, & cujus horum operum facit Rex, ejus minister erit cujus horum operum facit, igitur dum facit justitiæ vicarius est Regis æterni, minister autem Diaboli cum declinet ad injuriam*. Now, pray tell me, if the King can thus cease to be God's Lieutenant, and become the Devil's Officer, whether we can properly be said to be under the Power ordained by God, or that we can be very safe in such Hands, I cannot very well see.

As for unnecessary Wars, undertaken without any such Cause, for meer Pretences of Liberty and the publick Good; and which may have sometimes caus'd many more Mischiefs and Inconveniences than those they pretended to cure; does it therefore follow, that no Wars, tho' against insupportable Tyranny, and for Self-defence, have never been, nor may be, undertaken by any Nation in the World; and

and that the State they are in, after such a War, is always much worse than it was before? Which is notoriously false, as you may see by so many Instances I have given you from our own Histories; as I could also shew you from other Countries; such as the *Switzers* and *Dutch*, who have by defending their Liberties when unjustly oppressed, brought themselves into a State of Plenty, Liberty, and Safety. And therefore, notwithstanding your making so light of Men's just Rights, Liberties, and Properties, there are certainly such Things that distinguish a Free People from Slaves; as any, who will but travel into *France*, *Turkey*, or any other Arbitrary Government, may easily satisfy themselves. And if these Things ought to be really esteemed as the Causes of all the Earthly Happiness we enjoy, then certainly they may be defended, and fought for; and if in the Purchase of them many Men's Lives happen to be lost, this is no necessary Consequence; since such Reforms are often brought about with very little Bloodshed: As appears by many Instances I have now given of such Resistance, and may more evidently appear by this late great and wonderful Revolution. But admitting it should happen as you say, and that a great Part of a Nation should be destroy'd in a Civil War, for their just Rights and Liberties; yet it is still upon your own Topick, better for Mankind that it should be so, if true Liberty (I do not mean from lawful Authority) may be but obtain'd at last thereby; since Life is not to be esteemed only for meer living, but living happily; *non est vivere, sed valere Vita*; and Life is enjoyed by Slaves in Gallies, as much as by the greatest Prince; yet no rational Man but will allow that Men may venture their Lives, rather than suffer themselves and their Posterity to fall into that miserable Condition; the like he may, if they were only to be reduced to the Condition of the Peasants in *France*, or ordinary Christians in *Turkey*; and if so, I think I may then safely affirm, that it is better that half the People of any Country should be destroyed by a Civil War, if their just Rights and Liberties may be preserved to them and their Children at the last, than that Slavery, with all its Consequences, such as Ignorance, Baseness of Mind, Cowardice, Beggary, &c. should ever be entailed upon a Nation: For as for the Loss of Men, it may be made up again in some Generations; but when Men's Civil Liberties and Properties are once lost, they cannot, without some rare and unexpected Revolution, be ever regained; as we see in the Subjects of all Sorts in *France*, *Turkey*, and *Muscovy*, &c. at this Day. And therefore, if you please better to consider, the real Liberties of a People (such as we contend for) are not that of School-Boys, to be free from the Lash of their Masters: However, that if such a Discipline were to be exercised upon Men all their Life-times, I think no Man but would say it were worth venturing his Life, rather than to fall into so miserable a State. So that what you cite from the Poet *Lucan*, is only to be taken as a Poetical Exclamation against the Miseries that Civil Wars often bring upon a Nation: But to say that it was *Lucan's* Opinion, that Subjection under the severest Tyrant, was better than the Liberty the People of *Rome* enjoyed, is to suppose that either you or I have never read that Author; since nothing is more plain, than that the main Design of that Poem is to magnify *Cato* and *Pompey*, who fought for the Liberty of their Country, above *Cesar*, and those that joined with him to destroy it. As for all the rest that you have said, that you could make a History of greater Miseries, as Loss of Liberty, &c. that have come upon whole Nations by fighting for their just Rights and Liberties against Tyrants, than by all the Tyranny and Violence of Mankind; I think you would have a hard Task to make it good, since I suppose under Absolute Monarchies it is unlawful for the People to take up Arms, till they are either like to be enslaved or destroyed by the Tyranny of their Prince, or else so intolerably oppressed by his Soldiers, that they can scarce even in a State of War live in a much worse Condition; and if they are ever subdued and reduced to their former Condition, they cannot be worse than what they were under before. The like I may say as to Limited Monarchies or Commonwealths, that degenerate into Tyrannies; the People may perhaps better their Condition by Resistance, and recover their Liberties, but cannot be in a worse, if they are overcome: For I do not allow such Resistance lawful till the very Fundamental Constitutions of their Government, whereby it is distinguish'd from an Arbitrary Despotick Power, be actually invaded, or taken from them: So that let the worst that can happen, they can scarce fall into worse Condition than they were before. And as for *England*, we may speak it experimentally, That of all the Resistances that have been made by the Major Part of the Nation, or greater Part of it in Defence of their

their just Rights and Liberties, every one of them have happened for the best, and been a Means of restoring this Kingdom to its former Estate, except the last, in which I grant we lost it by that War; yet that was not from the Doctrine it self, but because the War was begun and carried on by a violent Faction, upon unjust Grounds; and, which was worse, the Government and Discipline of the Church, as established by Law, was altered without any Legal Power; all which could never have happened, had not that War been not only begun, but continued to the very last by a Standing Army, which could give what Laws they pleased, even to those that pretended to command them. So that why the Abuse of this Right once in a Thousand Years, should be made any just Argument against the ever using it at all, I can see no Reason in the World for it.

As to the rest of your Discourse against making any War about Religion, that is also as fallacious: For though I grant, that true Religion is not to be propagated, yet I think it may lawfully be defended by the Sword, especially where it is the received Establish'd Religion of a Nation; or else the Defence of Religion against Infidels, would be no Argument at all to fight against a *Turkish* or *Popish* Prince that unjustly invaded us. For tho' it is true, that Religion cannot be taken away from any Man without his Consent, yet a Man may be taken from his Religion; and when the Professors are destroyed, either by Martyrdom, or violent Persecution, as bad, or worse than Death, what will become of the Church and Religion Established by Law, when all the Persons that constitute that Church are driven away, destroyed, or made to renounce it? And for this we need go no farther than over the Water to our next Neighbour. It is likewise as fallacious what you urge of the great Corruption of Manners by Civil Wars; which if it be any Argument at all, is so against all Standing Armies whatever, whether raised by lawful or unlawful Powers. And I think there was much more Debauchery in the King's late Camp at *Hounslow-Heath*, as also in all Places where they quartered, than was lately at *Tork* or *Nottingham*, among those that took up Arms in Defence of their Religion or Civil Liberties unjustly invaded by the King and his Ministers. Nor does it always happen, that Armies raised for Defence of Religion and Civil Liberty, must prove debauch'd; since we may remember, that the Parliament Army (to its Praise be it spoken) was infinitely more Sober, and outwardly Religious, than the King's. But if you will say that this proceeded from their Principles, as well as good Discipline, I know no Reason why Men who fight in Defence of their Religion and Civil Liberties, may not upon Church-of-England Principles, as to Church-Government, and Common-Prayer, may also by a strict Discipline be as little debauch'd as any Standing Armies the most lawful Monarch can maintain; who if they lie Idle, as ours have done all this King's Reign till now of late, are more likely to fall into all the Wickedness that attend a loose Discipline, and want of Employment, and consequently may also corrupt the Places where they Quarter by their ill Example.

M. I shall not longer argue this Point, since I see it is to no Purpose. But you have not yet told me what these fundamental Rights and Liberties are, that you suppose the People may take up Arms to defend; nor yet what Number of the Nation may thus judge for themselves, and take up Arms when they please; for it may so happen, that the whole Nation may be divided as to their Opinions concerning these Things. And the *South Part* of *England*, (for Example) may think their Religion and Liberties in great Danger, and that it is very necessary to take up Arms for it, when the *North Parts* are not under those Apprehensions, but lye still; as was lately seen in the Risings for the Prince of *Orange*.

F. As to the first of these Queries, I think I can easily give you Satisfaction, and such as you can have nothing material to reply to. And as for the other, though I do not say I can give you such an Answer as will bear no Exception or Reply, yet I doubt not but it will be that which may very well be defended, and may serve to satisfy any indifferent and unprejudiced Person; and which, if not allowed, will draw much worse Consequences along with it. And therefore as for the just Rights and Liberties we contend for, they are only such as are contained in *Magna Charta*, and the Petition of Right, and are no more than the Immemorial Rights and Liberties of this Kingdom; and that first, In respect of the Safety of Mens Lives, and the Liberties of their Persons. Secondly, The Security of the Estates and Civil Properties. And Thirdly, The Enjoyment of their Religion, as it is established by the common Consent of the whole Nation. All which I will reduce to these plain Propositions.

1. That

*V*id. Pryn's 1st
Part of the Vin-
dication of the
Rights of
English Free-
men.

1. That no Freeman of *England* ought to be Imprisoned or Arrested contrary to Law, without specifying the Cause of his Commitment in the Warrant, or *Mittimus*, whereby he is sent to Prison. And he ought not to be sent out of the Body of the Country, or Jurisdiction where the Crime was supposed to be committed, unless he be removed by due Course of Law. Neither ought he by the Law of *England*, to be detained in Prison without Tryal only for a Punishment; but ought to be Tried the next Assizes or Goal-delivery, or within some reasonable Time to be allowed of by the Court. And this was Common-Law, many Ages before the Act of *Habeas Corpus* made in the 31st of King *Charles* the Second, which does but ascertain that Law concerning bailing Men for all manner of Crimes, in case no Prosecution come in against them: Much less can the King, or any Court below the whole Parliament, banish any Man the Kingdom in any Case, unless by some known Law already made, whereby he is bound to abjure it upon a lawful Tryal by his Peers, and Conviction by his own Confession.

2. Nor can the King, nor any Courts of Justice, condemn a Man to loss of Life, or Members, without due Tryal by his Peers, and Legal Judgment given thereupon.

And for Proof of this, I need go no farther than *Magna Charta*, and the Petition of Right, which are both but declaratory of the Common Law of *England*. See therefore *Magna Charta*, Cap. 29. whereby it is Declared and Enacted, That no Freeman may be taken and Imprisoned, or be disleised of his Freehold, or Liberties, or his free Customs, or be Outlawed, or Exiled, or in any manner destroyed, but by the lawful Judgment of his Peers, or by the Law of the Land, which is also farther confirmed and explained by these Statutes, viz. the 37th, 38th, and 42d of *Edward* III. and 17th of *Richard* II. all which are summoned up, and more particularly declared against, contrary to the fundamental Laws of the Land, in the Petition of Right exhibited to King *Charles* I. in Parliament, in the Thirtieth of his Reign; wherein the late Imprisonment of the King's Subjects without any Cause shewed, and the Denial of *Habeas Corpus* are expressly resented; as also putting Soldiers and Mariners to Death by Martial Law in the Time of Peace. And the King's Answer to this Petition is remarkable, The King willeth that Right be done, according to the Statutes and Customs of the Realm, &c. Which not satisfying as too doubtful and general, the King at last gave this full and clear Answer in legal Form, *Soit Droit fait comme il est desire*.

Cap. 18. 9, 3.
Cap. 6.

*V*id. Rush-
worth's Hist.
Vol. pt. 1. P.
507, 598, 625.

The Second Point in relation to our Civil Properties is this, That no Tax, Tailage or Aid shall be laid or levy'd by the King, without the Consents of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and whole Commonalty of the Realm in Parliament. This was first of all granted by the 56th Law of *William* the First, which I have already cited; as also more particularly forbid by the Statute *de Tallagio non concedendo*, in the 34th of *Edward* the First, which was but a Revival, or Explanation of the former Law of *William* the First, and also by the 25th of *Edward* the Third; whereby it is Enacted, "That no Person should be compelled to make any Loans to the King against his Will, because they are against Reason, and the Franchise of the Land; and it is also provided, that none should be charged by any Charge or Imposition called a Benevolence, nor by such like Charge, which is also more fully set forth in the said Petition of Right, to have been lately executed by certain Commissioners; as also that divers other Charges have been laid and levied by Lords-Lieutenants, Deputy-Lieutenants, &c. contrary to the Laws and free Customs of the Realm.

The Third Point declared against in this Petition of Right, is against Quartering of Soldiers (though they pay for their Quarters) contrary to the Will of the Owners and Inhabitants, much more when they did take free Quarter in Time of Peace, as hath been too much practised of late. So that by the Common Law of *England*, not only Private-Houses, but Inns and Ale-Houses, are not compellable to Quarter Soldiers unless they will. So much was this Nation anciently a Stranger to Standing Armies, and Quartering of Soldiers in Time of Peace, that there was no Provision made for it, either at Common-Law, or by any Statute that I know of.

4thly, That no new Law can be made without an express Act of Parliament, or the joint Content of the King, Lords and Commons: And therefore that Parliaments ought to be duly summon'd and held for the Good and Safety of the Kingdom, by Common as well as Statute Law, once every Year: and according to more modern Statutes, once in Three Years at least, or whenever there is a just and necessary Occasion for it. And for Proof of this, I need go no farther than the Old *English Saxon Law*, which ordains, That the great Council, or *Mycel Synod*, should be held twice in the Year, as the Ancient *Mirror of Justices* recites, and the constant Custom long after the Conquest, in which there never passed a Year without a General Council of the whole Kingdom. And when this came by degrees to be discontinued, then were those Statutes of *Edward the Third*, and *Richard the Second*, made; whereby it was enacted, That a Parliament should be held every Year, and oftner if there were Occasion.

5thly, Since the Legislative Power of Parliaments is the very Soul and Essence of the Government, the Election of Knights, Citizens and Burgesses to sit and serve in Parliament, ought to be free; and all the Members of Parliament, who have Places there either by Patents or Writs of Summons, as the Lords; or else by Election or Writs, as the Bishops, ought to be present, and there to have Freedom of Speech and Votes, without any Guards to over-awe or terrify them; and none to be forced, threatned, bribed or tamper'd with to give their Votes contrary to their Consciences, either by the King or any of his Ministers. This is ordain'd by the Statute of *Westm.* 1. Chap. 5. whereby it is expressly provided, That all Elections ought to be free. Which *Sir Edward Coke*, in his Notes upon this Statute, extends to Elections of Knights of Shires, as well as other Elections since. I have sufficiently proved, that the Commons elected Members to Parliament when this Statute was made; and that this was the Ancient Law of *England*, you may see in the Rolls of Parliament, 1. *Hen.* 4. wherein it is alledged by the Parliament, as one of the Articles against *Richard the II.* in these Words: *Item licet de statu & consuetudine Regni sui in Convocatione cuiuslibet Parliamenti Populus suus in singulis Comitatus Regni debeat esse liber ad eligendum, & deputandum Milites pro huiusmodi Comitatus ad inter essendum Parliamentis, & ad expendendum eorum gravamina, & ad proseguendum pro remediis superinde prout videntur expedire.* N. 36.

Tamen prefatus Rex ut in Parliamentis suis liberius consequi valeat sue temerarie voluntatis effectum, direxit mandata sua frequentius Vicecomitibus ejus ut certas Personas per ipsum Regem nominatas, ut Milites Comitatus, venire faciant ad Parliamentum sua; quos quidem Milites eidem Regi faventes inducere poterat, prout frequentius fecit, quandoq; pro minas varias, & terrores, & quandoq; per munera ad consentiendum illis que Regno predicto prejudicialia fuerant, & Populo quamplurimum onerosa, &c. So that you here may see, that it was then judged by the whole Parliament to be a Breach of one of the Fundamental Liberties of the Nation, for the King to make false Returns to be made of Parliament-Men, as also to corrupt or over-awe their Votes, either by Promises or Threatnings.

But to conclude: That we have such Things as Fundamental Laws and Privileges, I shall go no farther than King *James* the Ist his Speech, confirmed by an Act of Parliament of the First Year of his Reign; wherein it is recited, " That the King hath vouchsafed to express many ways, how far it is, and ever shall be from his Royal and Sincere Care and Affection to the Subjects of *England*, to alter or innovate the Fundamental Laws, Privileges and good Customs of this Kingdom, whereby not only his Royal Authority, but the People's Security of Lands, Livings, and Privileges (both in general and particular) are preserved and maintained; and by the abolishing or Alteration of which, it is impossible but that present Confusion will fall upon the whole State and Frame of this Realm. So that if this Judgment of the King and both Houses of Parliament was true, sure we may justly suppose, that Things of such vast Concernment deserve our contending for by all Means possible and lawful to preserve them: For what the Nobles of the Land upon Occasion once said with one Voice in full Parliament, every Free-born Subject of *England* may as well say at this Day, *Nolumus Leges Angliæ mu-*

Lord Bacon's
Letters, p. 43.

Ibid. p. 41.

tari; which is a Maxim that ought to be imprinted upon the Hearts of all true *Englishmen*; who, (as my Lord *Bacon* very well observes) take themselves to have as good Title to their Laws, as to the common Air they breathe in: And King *Charles* the 1st somewhere says, "That it was his Maxim, that the King's Prerogative is to defend the People's Liberties; and that the People's Liberty strengthens the King's Prerogative. For indeed, if the Foundations are destroyed, the Superstructure cannot stand; and if this Rule had been well observed by this King's Sons, we had not been reduced to this great Confusion we now lie under. For my Lord *Bacon* calls those Flatterers, who put the King upon such dangerous Courses, as great Traytors to him in the Court of Heaven, as he that draws his Sword against him. And King *James* the 1st. in his Speech in Parliament, 1609, calls all those who persuade Kings not to be confined within the Limits of their Laws, "Vipers and Pests both against them and the Commonwealth."

M. For my part, I shall not go about to defend such ill Men, whoever they be; yet since such Insinuations are done privately, and in a Corner, it is very hard for Subjects to judge when such evil Counsels are infused into the Ears of Princes; and much more unjust for them to make any Resistance on pretence to remove them: And therefore, besides the Absurdity of making Subjects both Judges and Parties, you have not yet told me, what Number of Men must be at once oppressed in their Fundamental Rights (as you call them,) and who may make this Resistance. For methinks it is very absurd, to give one County (for Example, upon the Account of free Quarter,) a Power of rising in Arms, and resisting the King's Officers and Soldiers, when perhaps all the rest of the Nation, where no Soldiers are, feel no such thing.

F. I am not so unreasonable, as to maintain, That Subjects ought to take Arms merely because the King gives too much Ear to Flatterers and wicked Ministers, or is too much led by them: Let him be so, provided the People do not smart for it. But if once it comes to that pass, that they grow intolerable, and set the King upon a General Invasion of the People's Rights, in any of the great Points I have now laid down; let them look to themselves. If they will not permit a Parliament to sit, and redress those Grievances, they must expect the Nation will rise at last against them, as they did against *Gaveston* and the *Spencers*, and make them undergo that Punishment they so well deserve. But as for what you say, of making the People Judges when their Rights and Liberties are invaded, the Consequence is as bad, if the King alone shall judge. As for Example, in the Case of Ship-Money; the Judges gave their Opinions, that the King might raise Money for Ships of War, in case of Necessity, without any Controul; but if he were sole Judge of this Necessity, he might lay this Tax as often, and raise it to what Degree he pleased. Therefore, as I shall not deny that the King may judge it fit to do a great many Things against the strict Letter of the Law, in Cases of urgent Necessity; but it will be at his Peril if he judge amiss. As for Example: Every Man's House is his Castle, and he may lawfully defend it against all illegal Commissions; yet I think no Man will deny, but that in case of a Fire in *London*, the King may, by Common Law, command his Officers to break open some of the next Houses, and blow them up with Gunpowder to stop the Fire: But admit he should, out of Malice or Misinformation, command some Houses to be blown up that stood a Mile off, under Pretence of stopping the Fire, do you think the Owners were bound to stand still, and let them do it?

But if the People must not judge when their Fundamental Rights and Liberties are invaded, because they will be both Judges and Parties; then no Man whatever, by this Argument, ought to defend himself against the Violence of another: For who can be Judge, but he that feels the Blow? Nor indeed could Princes make so much as Defensive Wars, since whenever they do so, they are themselves both Judges and Parties, as I told you at our Third Meeting, when I answered (as I then thought) all your Arguments against the People's ever judging for themselves. So that if it be proved, that the People, in a Limited Kingdom, remain, as to the Defence of their Lives, Liberties, Religion and Properties, always in the State of Nature, in respect of their Prince, as well as all the rest of Mankind, they

they must certainly make use of defensive Arms when Necessity requires it, or else become Slaves whenever he pleases to make them so, if the People have no Right to judge of his Violence and Oppressions?

But as for the Number that are to make this Judgment and Resistance thereupon; I grant in most Cases this is not to be done, as long as the Oppression is begun by Colour of Law, without actual Violence. Secondly, when it concerns only some particular Bodies of Men; thus, if Free Quarter should be taken in one or two Towns or Counties, I do not allow it a sufficient Cause for all the Neighbouring Towns, much less the whole County, or the Neighbouring Shires, to take an Alarm, and rise in Arms upon it; since, perhaps, the King may know nothing of it, and if he were once informed of it, would redress it: But can you affirm the Case would be the same, if this Grievance should become general all over the Nation? And that the King should be so far from redressing it, that he should put out a Declaration, setting forth that it was his Prerogative so to do; would not the whole Nation then take it for granted, that the King's Design was to govern by a standing Army, who should live upon the People, and devour them to the very Bones? And might not they make Resistance against these Robberies and Oppressions? The same I say for all other Breaches made in any other of our Fundamental Rights. I do not allow any Resistance to be made, till it become a general Oppression upon the whole or major Part of the Nation, and without all Hopes of being otherwise remedied. And this must be also so evident, that there can be no Doubt or Denial of the Matter of Fact; for so long as the Case is disputable, or the Grievance is not of a general Concern, I grant the People ought never to stir: But of this they alone must judge; since our Constitution has left us no other Judges of these Breaches, but the diffusive Body of the whole People in the Intervals of Parliament.

But for your last Question, as to the Number that may thus rise to make this Resistance, I answer thus; That when once the Mischief becomes general, and without all other Remedy, any Part of the People who think themselves strong enough to defend themselves against such Violence, may begin to rise, if they can, till the rest of the Kingdom can come into their Assistance; as I told you the Town of *Briell* did against the Tyranny of the Duke *D'Alva*, in the beginning of the *Belgick* Wars; and it was soon after seconded by the Revolt of divers other Cities and Towns in those Provinces, till the *Spaniards* were quite driven out.

M. I do not deny but you speak more moderately on this Subject than most of your Opinion, who think every private Man has Right to take up Arms and raise a Rebellion, whenever he judges his Person or Estate is invaded, or injured by the Government. And indeed this Remedy of Resistance seems at first sight pretty tolerable, if it were not that we very well know that this many-headed Beast, the Multitude, is very apt to be deluded by the cunning Speeches, and sly Insinuations of factious and ambitious Men, whose Interest it will always be to fish in troubled Waters, and raise Disturbances to make themselves the Heads of a Party. Thus in the Year —42. what Lies and Stories were there raised to incense the People against that good King, to make them take up Arms against him, as an Invader of their Liberties, and one that was about to make War upon them: And who that is not over-partial to his own Opinions, does not see, that the Nation has been blown up into a Flame by the lying Reports of a *French* League, and a supposititious Prince of *Wales*; neither of which, I durst pawn my Life, have the least Tittle of Truth in them. So that this Doctrine can scarce fail, almost every Time it is put in Practice, to bring all Government to Anarchy and Confusion.

F. I have already in Part answered this Objection at our Third Meeting; but since you will urge it over again, I shall in the first Place admit the Matter of Fact to be as you say, that the People may, by some turbulent Demagogues, be sometimes so far incensed as to take up Arms when there is no just Occasion; yet let me tell you, I doubt that neither of these Instances you have given, will make good your Assertion. For in the first Place, as to King *Charles* the First, it is said by all Writers on the Parliament's Side, that the King by leaving his

Parliament, and going to *York*, and there taking a Guard when no Enemy was near, and when the Parliament had as yet raised no Forces at all; as also by his going to *Hull* to remove the Magazine of Arms that lay there, in order to put them into the Hands of an Army to make War upon the Parliament who then demanded the Settlement of the Militia to be in Commissioners of their Nomination; that he thereby broke his Coronation Oath, whereby he was sworn to govern according to Law, and not by Force. But as for what you say in respect of the present Juncture of Affairs, I never can desire a more plain Proof of the People's Necessity of taking up defensive Arms; since admitting that neither of the Reports concerning the *French* League, and the false Birth of this supposed Prince be true; yet, I think, the Nation has had sufficient Provocations to rise as one Man, and joyn with the Prince of *Orange* for the obtaining of a free Parliament to set all Things right, which the King's violent, illegal Administration has so much discomposed. But admitting the utmost you can suppose, that sometimes the People may judge amiss, as well as the King, and through that Misinformation may take up Arms against their Prince, when there is no real Occasion; shall this Abuse of a Right be a sufficient Cause against their ever exercising of it at all. I am sure this is no good Argument against the natural Right of Self-Defence between private Persons in the State of Nature, that some Men do often abuse it; nor can I see how, upon these Grounds, even Sovereign Princes may be allowed to make so much as defensive Wars, (as I said but now) since they may pretend that themselves are wronged, and invaded, or at least are like to be so, when no such Thing was really done, or intended; and so by their Misjudgment or false Pretences, many Millions of Lives may be lost: What then? Must no Prince ever make War at all, till all the World be satisfied of the Justice of his Quarrel? If so, I doubt the last War King *Charles* the Second made against the *Dutch*, and this late War the King of *France* has now made upon the Empire, should never have been by your Principles so much as begun; much less carried on with so great an Effusion of Blood, and the Destruction of so many Cities and Towns: And whether this, as well as Tyranny at home, is not more often put in Practice by Princes, than any Resistance of this Nation, or all the Subjects of the World have made against such Tyranny and Arbitrary Power, I leave it to your self, or any indifferent Person to judge.

M. I doubt not but I may very well join Issue with you upon this Point; for I think that upon those very Conditions and Grounds you have now laid down, the Clergymen, Lords, Gentlemen, and Commons of this Kingdom, who have either come over with the Prince of *Orange*, or have taken up Arms in Defence of his late Declaration, cannot justify themselves by any of the Instances you have given for joining themselves with him in Arms. For tho' I grant His Majesty, by harkening too much to Popish Counsels, may have done many Things which in Strictness of Law cannot be justified; yet since they do not strike at that which you call the Fundamental Constitution of the Government, and have been also done without any Force on the People of this Nation; but have been either transacted by Judgment of Law, or the Colour of it at least, viz. by the Opinions of all or the Major Part of the Judges; all the Parties above-mentioned ought (according to your own Principles) to have waited for the Meeting of the next Parliament, to whose Determination they ought, by the Law of the Land, to have referred all such Grievances and Violations of Laws which they had to complain of; and if then the King had refused to have remedied them, they might have had some Colour (I do not say Right,) for taking up Arms, and doing what they have done; whereas I cannot see how you can, even upon your Principles, defend the late Risers from wilful Rebellion against the King.

And for Proof of this, I need go no farther than the Prince of *Orange*'s late Declaration, which being drawn by the best Advice of the Malecontents then in *Holland*, would not fail to mention all the Violations of Law, which they thought his Majesty's Government had been guilty of, ever since his coming to the Crown: And therefore, not to insist upon the Want of Right which I conceive the Prince had to concern himself with the Affairs of another Prince's Kingdom,
I shall,

I shall, however, mention every Article in which his Highness conceives the Religion, Laws, and Civil Liberties of this Nation to be endangered. In the First place, As to the dispensing Power, which the King has lately assumed to himself in Matters of Religion; and thereby putting into Offices and Commands Persons incapable by Law of bearing them, without taking the Test; as I shall not now dispute the Legality or Illegality of the King's Declaration concerning it, so as to that Part of it which concerns Liberty of Conscience, or dispensing with the Papists and Dissenters to meet in Assemblies for their Religious Worship, notwithstanding all the Acts made against Mass and Conventicles, it was no more than what King *Charles II.* had done before with the Advice of his Privy-Council; in which, if it had been Rebellion to have opposed him, sure it is the same Crime in the Reign of his Brother.

2. As for the Commission for Causes Ecclesiastical.

F. Since I foresee your Discourse upon this Subject is like to be long; and to consist of many more Heads than I doubt my Memory will serve to bear away, pray give me Leave to answer all your Instances one after another, as you propose them. First, then, As to the late Declaration concerning the Dispensing Power, it was so far from being done by Law, or so much as the Colour of it, that besides its being against divers express Acts of Parliament, which tie up the King's Hands from dispensing with the Acts against publick Mass and Conventicles; as also that disable all Persons whatever to act in any publick Employments, till they have taken the Test appointed by the said Act. (in which all *non-obstantes* are expressly barred): But this Declaration was never so much as shewn to the Privy-Council, till it was ready to be published; and then, indeed, the King caused it to be read in Council, declaring that he would have it issued forth, tho' without ever putting it to the Vote, or so much as asking the Consents of the Privy-Counsellors there present; tho' I grant the Title of it sets forth, that it was done by his Majesty in Council, to impose upon the Nation that stale Cheat, whereby this King (as well as the last) would have had us believe, that their Declarations had been issued by the Consent of the Council, when, God knows, there was no such thing.

And as for any Judgment, or Opinion of the Judges to support it, and make it pass by Colour of Law, it was never, as I can hear of, so much as propos'd to them in their judicial Capacities, though perhaps it might be propos'd to the Lord Chancellor, and some of the Judges who were of the Cabal, which is nothing to the purpose; all that I ever heard to have been brought judicially before them, was, the Case of Sir *Edward Hales* taking a Commission for a Colonel of a Regiment, after he had openly declared himself a Papist; in which great Point, though I grant the Major Part of the Judges gave their Opinion for the Dispensing Power, yet was it only *in the Case of Military Commissions*, as several of them afterwards declared, and not of all sorts of Employments, as well Civil as Military; much less for Popish Heads of Colleges, Parsons and Bishops, to hold their Livings, Headships, and Bishopricks, if they pleased to turn to the *Romish* Religion; or that the King should please to bestow them upon Popish Priests, it would have been as legal in the one Case, as in the other; since as for Popish Heads of Colleges, and Parsons, we have had too many Instances of it; and if we had none for Bishops, we must thank the Constancy of most of them, if they have not openly declared for the *Romish* Religion, since they might have kept their Bishopricks notwithstanding. But I do not at all doubt but that such a general Dispensation for professed Papists to take and hold all sorts of Offices and Places of Trust, not only Military, but Ecclesiastical and Civil, would have in a little time brought all Offices and Employments into their Hands.

Nor is this Dispensing Power in Matters of Religion, the sole thing aimed at by this Declaration, as appears by the very Words and whole Purport of it; which is not confined to Matters of Religion only, but claims an unlimited Power of dispensing with all Sorts of Statutes in all Cases whatever, none excepted; and if so, pray tell me what *Magna Charta*, or the Statute *de Tallagio non concedendo*, or any other Law will signify, whenever the King pleases to dispense with them, either as to raising Money, or taking away Mens Lives, or Liberties, or Estates, contrary

contrary to Law? Nay, the Papists already give out (and that in Print) that all Laws for taking away Religious Orders, and Suppressures of Monasteries, are against *Magna Charta*, by which *Holy Church* (that is, the Popish Religion then in being) is to enjoy all her ancient Rights and Liberties; and the Abbots and Priors do thereby, as well as the Bishops and Lay-Lords, reserve to themselves all their ancient Rights and free Customs. Now whether this unbounded Prerogative would not quickly have destroyed not only the Ecclesiastical, but Civil Constitution of this Kingdom, as they now stand establish'd by Law, and would have soon introduc'd both Popery and Arbitrary Government on this Nation, I leave it to your self, or any indifferent Person to consider.

And though I do not say, that the bare giving of Papists or Protestant Dissenters a Liberty of Religious Meetings, or Assemblies for Mass, or Preaching, is an Infringment of the free Exercise of our Religion establish'd by Law; yet pray take one thing along with you, which is a Matter of great Moment to the Dissenters, as well as to us of the Church of *England*: For if the King can thus, by his Prerogative, give them a Liberty to meet publicly, contrary to Law; let the latter look to it; for he may by the same Prerogative (whenever he pleases) dispense only with the Papists, and keep the Laws still on foot against Dissenters; nay, he may by the same unbounded Prerogative dispense with all the Laws for the publick Exercise of our Religion; and under pretence of dispensing with them only in some particular Cases, shut up our Church-Doors one after another, beginning with the Cathedrals, and so proceeding by degrees to Parish-Churches. And tho' I grant King *Charles II.* did assume a Power of dispensing with all Statutes concerning Religious Meetings, contrary to Law; yet the Nation had not then any sufficient Reason to rise in Arms against this Declaration; since it did not extend the King's Prerogative beyond those Acts concerning Religious Worship. And farther, the Nation was not out of all Hopes of having it redressed by the next Parliament, and so was not in that desperate Condition in which it was lately, before the Prince of *Orange's* coming over. And you may remember, that the late King, upon the joint Address of the Lords and Commons against that Declaration, was forced to call it in, and cancel it; which certainly ought to have been better considered by his Majesty, and those of the Popish Junto that advis'd him to issue out the late Declaration, so expressly contrary to Law, and the Sense of both Houses of Parliament, and which gave the Archbishop of *Canterbury*, and the rest of his Brethren, a sufficient Ground of petitioning against it; and this was so evident, that a Jury, in which the greatest Part were high Prerogative-Men, could not upon a fair Trial but acquit them.

M. I shall not further dispute this Point, since you have dwelt so long upon it; though I must still tell you, I do not look upon this as a sufficient Cause for the Nation's taking up Arms, for another Reason I shall shew you by and by. And therefore I shall now proceed to the next Head complain'd of in the Prince's late Declaration, (*viz.*) the late Commission for erecting a new Court for Causes Ecclesiastical; but as I will not enter upon the Question of the Legality of it, so on the other side it was also done by Colour of Law; and the King, as supreme Head of the Church, was told by his Ministers, that he had Power to erect what new Court Ecclesiastical he pleased, provided it was not of the same kind with the High Commission-Court, which had been abrogated by the Stat. of the 17th of King *Charles I.* as likewise particularly excepted in the Proviso, in the Stat. of the 12th of King *Charles II.* for restoring Ecclesiastical Jurisdiction to the Bishops Courts: So that admitting that Court was not legal, yet the Persons who advis'd the King to erect it, and the Commissioners who sat in it, were only answerable for it in the next Parliament; and though the Bishop of *London* was suspended, and the President, and Fellows of *Magdalen College* were unjustly expelled by this Court, yet sure none of these Miscarriages could give the Subjects of this Kingdom any just Pretences to take up Arms to redress them, being done (as I said before) by Colour of Law, without any Force or Violence; and was also submitted to by the Parties against which these Decrees were given, and was at the most but a Matter of particular Concern, and reach'd no farther than the said Bishop and College, and did not touch the Religion and Civil Liberties

Liberties of the whole Kingdom ; and consequently was not of that general Importance, as to be any just Cause of the whole Kingdom's taking Arms, much less for the King's Officers and Soldiers to run over to the Prince of *Orange*, as they lately have done.

F. To answer what you have now said concerning the Ecclesiastical Commission ; that, I must also tell you, was issued forth without so much as any Colour of Law for it ; and though the late Chancellor, and some of the worst and most Mercenary Judges countenanced it by appearing for, and acting in it, yet it is very well known, that it was never proposed to all the Judges to be argued in the Exchequer Chamber, as it ought to have been, before a Thing of that great Importance to the whole Nation had pass'd the Seals. As to what you say, that the King's Ministers told him it was according to Law, and that they alone ought to answer for it in the next Parliament, and that no publick Disturbance ought to have been made about it, because the Things that that pretended Court did, were but of a particular Concern, and only reach'd the Bishop of *London*, and one single College ; that is but a Fallacy which you put upon your self. For sure if you had better considered of it, you would find that what these Commissioners have already done, is of a little more publick Concernment than you are aware of ; for pray tell me, why by the same Law, by which the Bishop of *London* was suspended for his Refusal to silence Dr. *Sharp*, all the Bishops in *England* might not have been suspended one after another by that pretended Court, if they had refused to obey or execute any Letters or Orders from the King, tho' never so illegal or unreasonable ? Since what Command could be more illegal, than the King's positive Order to the Bishop to suspend a Clergyman from his Diocese, without first hearing him, or giving him leave to answer for himself ? So likewise for the Case of *Magdalen* College ; by the same Law by which these Ecclesiastical Commissioners took upon them to turn out the President and Fellows, for disobeying the King's *Mandamus*, by the same Law the King might put upon any other College in either University, Popish Heads, and Popish Fellows. till instead of Nurseries for the Education of our Youth in the Protestant Religion, they may become as absolute Popish Seminaries, as the Colleges of *Dorsey*, or *St. Omers*. And though I grant that the Persons concerned in these unjust Decrees, might have patiently submitted to them without any Protestations against the Jurisdiction of that pretended Court, since they might for some prudentia^l Reasons have thought fit to submit, without making any such Protestation, and yet for all that not allow their Authority ; yet indeed the Matter of Fact was far otherwise ; for when a Part of these Commissioners sat at *Magdalen* College, to expel the said President and Fellows from their Places, contrary to Law, and the express Statutes of the College, several of them protested against their whole Proceedings, and appealed to the King's Courts at *Westminster*. And it is a plain Proof how willingly Dr. *Hough* the President of this College, submitted to this Sentence, by his locking the Doors of his Lodgings, and leaving the Commissioners to break them open before they could get in, and put in his pretended Successor by Force.

But as to what you say, that the King was told, he might as Supreme Head of the Church, set up what new Court he pleased for the Execution of his Ecclesiastical Jurisdiction ; it is certainly a great Mistake. For I utterly deny, that the King has Power to erect any new Courts either Ecclesiastical or Civil, unless by Authority of Parliament ; the King's Power to make a Vicar-General being only confirmed by the Statute of King *Henry* the Eighth, as was also the Authority of the High Commission, by the Statute of the first of Queen *Elizabeth*. And if either of those high-spirited Princes had believed themselves to have been invested with such an unbounded Prerogative, they would certainly have exercised it without being beholden to the Parliament. But indeed it is but a Subterfuge, to alledge that this Court was not of the same Nature with that of the High Commission, because it did not take upon it to Fine, or commit Men to Prison, nor to administer the Oath *ex Officio*, to those that were convened before them ; since it is not the different Name, or some small difference in the Manner of the judicial Proceedings, but the Causes or Matters that a Court pretends to take Cognizance of, that can make it a Court of a quite different Nature.

Nature. Now it is notoriously known, that this late Ecclesiastical Court took upon it to judge of Matrimonial Causes about Alimony, and concerning Simoniackal Contracts, and all other Misdemeanors both of Clergy and Laity, against Religion and good Manners, which were the same Things the late High Commission Court took upon them to determine.

M. I shall make no farther Reply at present to what you now say, till I come to answer once for all: Therefore I shall go on to the next Thing excepted against in the Prince's Declaration, (*viz.*) the Erecting of Publick Chapels for Mass, the protecting of Priests, and the making a Jesuit a Privy-Councillor; all which, tho' I confess they are against the express Letter of divers Statutes, yet since all these Things depend upon the King's dispensing Power, set forth in his Majesties late Declaration, which as I will not assert, so I will not positively deny; since the said Declaration of Indulgence, and all Proceedings thereupon were issued out and executed under Colour of Law. *viz.* of the King's Ecclesiastical Jurisdiction, without any Force or Violence upon the Conscience, Religion, or Properties of the King's Protestant Subjects, whom the King in his said Declaration solemnly promises to protect in the free Possession, and Enjoyment of their Religion established by Law. And I cannot see how a Liberty granted to Popish Priests to say Mass, or the putting in a Jesuit into the Privy Council, or making Popish Judges, or putting a Papist into the Ecclesiastical Commission, can be looked upon as any Invasion of the Protestant Religion; the free and publick Profession of which we have (God be thanked) as quietly enjoyed as we did in the Reign of this King, or in that of his Brother.

F. Since you cannot directly justify the King's setting up Publick Mass Houses in London, and in most other Parts of the Kingdom, and his so publick protecting and countenancing Papists and Jesuits, even to the making a Jesuit a Privy-Councillor, tho' they are all in Judgment of Law alike publick Enemies and Traytors to the King and Kingdom; and that all these (as you cannot deny) are contrary to the express Words and Intent of all Statutes against Priests and Popish Assemblies; so you endeavour to palliate it under the King's dispensing Power, which you suppose to have had a Colour of Law (at least) to support it. But tho' the giving Liberty to Popish Assemblies, and the Conventicles of the Dissenters, was no direct hindrance of the free Exercise of the Protestant Religion established by Law, yet I must utterly deny that the King has any such Prerogative, as to dispense with those Laws, and by his sole Authority to declare those that the Law calls Enemies and Traytors, to be good Subjects. And you may as well tell me, that the King has not only a Prerogative Power to pardon Highway-men; but may also protect them, and put them into his Guards, with a Commission to rob whom they pleased; as to give Papists power to bear Arms, or to protect and employ declared Traytors, (as Popish Priests and Jesuits are by Law) as the King had done. The like I may say, for putting in Popish Judges and Justices of Peace, (*viz.*) that it was all done by Force of the King's personal Orders, without his Legal Authority, which is that alone we can take cognizance of, or render any Obedience to. And though 'tis true, I do not deny the King a Power of making whom he pleases Judges, yet this Prerogative is still to be exercised according to Law. And therefore if the King should make an illiterate Man a Judge, who could neither Write nor Read, the Writ or Patent would be void in it self. The same I may say of a Popish Judge; the Law making no Difference (as I know of) between a natural and a legal Disability. But however the turning out honest and able Judges, because they would not give up our Religion and Liberties to the King's Arbitrary Will, is certainly a much greater Breach of the Trust committed to him by his Coronation Oath, wherein he swore he would maintain the Laws of the Land, and mix Equity with Mercy in all his Judgments: Now where is the Equity, or Justice of this, that whereas most of the Judges anciently held their Places *quam diu se bene gesserint*, they should now (by a notorious Encroachment of the Prerogative) not only be made *durante bene placito*; but that the King should stretch this Prerogative so unreasonably, as to examine the Judges beforehand, whether they would agree to the dispensing Power; and to turn out those that refused to comply, merely because they would not serve his Arbitrary Designs? And then to put in some of the meanest and most mercenary Lawyers

at the Bar, (nay some who never come thither at all) into their Places for no other Merit or good Qualities, but because they would serve a Turn, is so notorious a Breach of his Oath, that it could not fail in a little Time to destroy all our Common, as well as our Statute-Laws, since these were all lately lodged in their Breasts, and resolved into their Arbitrary Determinations, which yet (as all the World knows) were wholly managed by the Influence and Commands of the Court : And this I say again, was as notorious an Abuse of the King's Prerogative, as if he had put in Highway-Men into his Guards, with Commissions in their Pockets, to rob whom they pleased ; since these Gentlemen in Scarlet have taken the same Liberty under Colour of Law, to raise Taxes upon the Subjects, against the Express Letter of an Act of Parliament ; as may be seen in their late Determination concerning Chimney-Money, making Cottages, built for the Use of the Poor, and Houses of Persons exempted from Payment, liable to Chimney-Money, contrary to the express Words of that Statute.

M. I cannot deny but the Things you now mention have been great Abuses of Prerogative, but whether so great as to require Resistance I must still disagree with you. Therefore I shall now proceed to the next Particular complain'd of, (*viz.*) The examining of the Lords Lieutenants, Deputy-Lieutenants, Sheriffs, and Justices of Peace, to know whether they would concur with the King in the Repeal of the Test and Penal Laws, and turning all such out of Commission as refused to comply with the King's Desires in this Matter. Now, tho' I will not say it was well or prudently done, yet it was no more than (what I think) the King, by his Prerogative, might justify the doing of ; since he may, by Law, give a *quietus est* to what Judges he pleases ; and put in or out of any Commissions, whether Civil or Military, whom he thinks fit : And as for the Persons so examined, they might have chosen whether they would have given any positive Answers to the Questions put to them, by the Lord Chancellor and Lord Lieutenants ; and if they had refused to answer positively to those Questions proposed to them, I know no other Penalty they had been liable to, more than being put out of Commission, which sure is no Punishment, but rather an Ease. And though I do not defend those evil Ministers, that put the King upon this Method of distrusting and disobliging his best Protestant Subjects, (I mean those of the Church of *England*) by putting them out, and putting in either Papists or Fanaticks in their Steads ; yet all that own themselves of that Communion, ought to have been of more loyal Principles, than to have taken up Arms, as some of them have done, upon Pretence of standing by the Prince of *Orange's* Declaration against these Abuses.

F. I see though you cannot directly justify the examining of the Lords Lieutenants, and Deputy-Lieutenants, and Justices of the Peace, about taking away the Penal Laws and Test, and turning those out of Commission that refus'd ; yet you strive to mitigate it (as far as you can) by making it Part of the King's Prerogative, to put in and out what Judges, Justices, and other Officers he pleases. Well, granting this to be so, yet sure you cannot deny but that the closetting of Judges, and all other Officers you have now mention'd, and putting those out of Commission, that refus'd to comply with the King's Will, (and that for no other Reason) was sure a strange Abuse of that Prerogative : And the Excuse you make, that the Persons examin'd had a Liberty to refuse whether they would give any positive Answer or not, is yet more trivial, since it is very well known, that as well those who gave doubtful Answers, or refused to make any Answer at all, were as much turned out, as they who positively denied to comply with the King's Demands : So that no Answer was looked upon as Satisfactory, but such as seemed to give up all Freedom of Elections, and Votes in Parliament ; none being to be chosen by the King's Directions, but such as would engage before-hand to repeal the Test and Penal Laws. And I think you will not deny, but that the King by thus examining all these Magistrates and Officers you now mention, and by turning those out that refused to comply, did all he could to hinder the Free Election of Members to serve in Parliament, and the Freedom of giving their Votes when they came thither : And the King might as well another Time have declar'd, That he would have no Members chosen, but such as would agree to take away the Statute *de Tallagio non concedendo*, or any Branch of *Magna Charta*,

which he should think fit to have repeal'd. And as this strikes at the very Fundamental Constitution of the Government, (*viz.*) the Free Election of Parliament-Men, so it was insert'd among the Articles against *Richard* the Second, that he had caus'd the Sheriffs to return whom he pleas'd for Knights of Shires, as I have already shew'd you.

But what say you to the King's late calling in almost all the Charters of Cities, Towns, and Corporations in *England*; and putting in Popish or Fanatick Officers and Magistrates into the Rooms of those that were turn'd out, only to influence Elections, and to procure what Persons he desired to be return'd for Parliament-Men? Is not this a grand Breach of the Fundamental Constitution of the Kingdom, thus to take away the Legal Rights and Privileges of these Corporations, for no other Cause than to procure the King such Parliament-Men as he had a mind to? And if a Parliament had been chosen by Men of these Principles, pray consider what small Hopes there would have been, for Men of like Principles with them that chose them, to have redress'd the Grievances the Nation then lay under.

M. I beg your Pardon, I forgot to mention this sooner; and though I will not take upon me absolutely to defend the Legality of it, much less the Design for which it was done, since I grant that it was in order to destroy, or at least to humble, the Church of *England*; yet since it was done by Colour of Law, and Judgment of the Court of *King's-Bench*, and no more than what has been formerly done in the Reign of King *Charles*; I cannot see how the Noblemen and Gentlemen lately in Arms, could defend their Rising upon that Ground, unless they would also at the same Time, justify the Lawfulness of the Plot and Rebellion intended in the same Reign; and in which so many of the Whig Nobility and Gentry were deeply engaged.

F. To answer what you have said in Vindication of this great Violation of one of the Fundamental Rights and Liberties of the Kingdom, I must in the first Place tell you, That as I shall not now examine into the Matter of Law, whether a Corporation can forfeit its Charter for Misdemeanors or not; much less shall I concern my self whether it were done by or without Colour of Law, or the Judgment of the Court of *King's-Bench*, since it is notoriously known that none of the Judges were permitted to sit there, nor any new ones put in, but such as would blindly agree to all the Court would have done; and therefore I value not any Thing they did, nor think it one Jot the more legal for their Judgments: Nor is it any Excuse, that the same Thing was done in King *Charles's* Reign, and therefore might as well be done now without any Rising against it. For though I must tell you, I look upon the taking away of the Charters from the City of *London*, and the other Cities and Corporations of the Kingdom, one of the most arbitrary and illegal Acts of that King's Reign, yet there were several Reasons which made it unlawful for the Nation to rise then; yet it might not be so now: As in the first Place, because most of those Charters were either willingly surrender'd by the Members of those Corporations, or else were declared forfeited by Trial and Judgment of Law. Whereas it was much otherwise in this King's Time, when notwithstanding that all the Cities and Towns Corporate in *England*, had but a few Years before taken out new Charters to their great Trouble and Expence, they were now summon'd anew to surrender these again, for no other Reason, but because it was the King's Pleasure it should be so. For who can imagine, that all the Corporations of *England* could have forfeited their Charters in so short a Time as Three or Four Years? And they were plainly told, that the King must and would have them; and that it was to no Purpose to stand out; and therefore it was no wonder, if all the Cities and Corporations of *England* were forced to submit patiently to this Violation, since they found by Experience the Judges were ready to give Judgment against them right or wrong.

And besides this, I have already laid it down as a Maxim, That no Resistance whatever is to be made, till Matters become desperate, and all other Means are become absolutely ineffectual, which I think they were not, as long as King *Charles* lived, who besides the Inconstancy of his Humour, which seldom persisted long, either in well or evil-doing, (especially if the ill Consequences of it were well laid open to him,) was too timorous then to have put in any Magistrates into Corporations, but such as were for the Protestant Religion, as it stands by Law

establish'd; and such, however angry they might be with those they call'd Whigs, in respect of their opposing the Duke's Succession to the Crown; yet I believe most of them would never have given up the Freedom of Elections of Parliament-Men, or have done any Thing to bring in Popery among us: So that as long as Things remained in this State, there were some hopes still left of a Redress of our Grievances, whenever a Parliament had met; and that the Nation was grown more cool, and had come to it self again after those Heats which had risen in the late Parliaments about the Succession, and other Things. Whereas now the Case was far otherwise in this King's Reign; wherein we found not only our Religion, but the fundamental Rights and Privileges of the Nation, struck at by the King's dispensing Power, and the Arbitrary Proceedings of the Judges. And not only the Freedom of Elections of Knights of Shires, but of Citizens and Burgeſſes, endeavour'd to be taken from us; either by threatening the Electors, or else by open Force; as I shall prove by and by, when I shall have Occasion to speak farther upon that Head: So that unless a great Part of the Nation had declared for the Prince of *Orange*, he had been repuls'd with Shame and Ruin, and our Chains tied faster upon us, than ever they were before.

M. I shall forbear replying farther to what you have now said, till I come to conclude. But in the mean Time I cannot omit another material Grievance set down in the Prince's Declaration, (*viz.*) the turning out and disarming the *English* Protestant Magistrates, Officers, and Soldiers in *Ireland*, and putting of *Irish* Papists in their Rooms; as also the late Declaration of Indulgence in *Scotland*; but as I will not defend the Justice or Prudence of those Councils, so I think none of them could give any sufficient Cause for the People of this Kingdom to rise in Arms; for sure it is enough (if not too much) for them to concern themselves with the Grievances and Miscarriages of their own Country, without taking upon them to take up Arms to reform those of their Neighbours; since they are not only ignorant of the Laws and Constitutions of those Kingdoms, but may also mistake the true Reasons and Grounds on which those Alterations were made.

F. I see you can as little defend what has been illegally acted in *Scotland*, as in *Ireland*; only you would fain put me off, by telling me that the People of this Nation have nothing to do to take Notice of what is done in other Kingdoms; and you may as well tell me, that a Man ought not to take any Warning, as to defend himself against Thieves, though he sees another Man robb'd by them before his Eyes; or that the Protestants of *England* should not take Warning by the sad Example of those in *France*, from ever suffering a Popish King from having the same Power here as the *French* King has in *France*, for fear of the like fatal Effects; *Since I never found Papists give Protestants the least Forbearance, or shew them any Mercy, longer than whilst it was not in their Power to hurt them.*

But to come to the Matter in Hand; we cannot but concern our selves with what has been so lately done in *Scotland* and *Ireland*, for the introducing of Popery and Arbitrary Government in those Kingdoms, since the latter is notoriously known to be govern'd by the same Laws as *England*; and it is as much against the Laws of that Kingdom, as it is of ours, for the *Irish* Papists to be put in Arms, and the Protestant Militia disarmed, and for Popish Judges, and Justices of Peace to be put in Commission, as hath been practis'd under the Government of the Lord *Tyrconnel*: And if *English* Protestants in *Ireland* cannot enjoy their Estates and Liberties, without being turned out of them by the Papists, how could we in *England* expect better Treatment, whenever they shall think themselves strong enough: And as for *Scotland*, though it be not wholly governed by the same Laws as *England*, yet the fundamental Constitution of the Government is the same in both Kingdoms, and the King can no more make, abrogate, or dispense with Laws in *Scotland* without the Parliament, than he can here; and therefore for the King not only to issue out such a Declaration of Indulgence, and Suspension of all the Penal Laws in *Scotland* against Papists, but also therein to declare, that he expected an Obedience to all his Commands, without Reserve (whether legal or not) was so bold a Stroke, that we could not but

expect the like in *England*, though His Majesty thought it not fit at present, to discover his Mind so plainly to us.

M. I shall not any longer dispute these Points with you, but own that the Abuses you mention, were indeed of great Concern both to the Protestant Religion, and our Civil Liberties; yet however, besides the Laws of the Land, (which I still suppose do expressly forbid all Resistance of the King upon any Account whatsoever) I think there ought to have been no such Thing done by any Subject of this Nation, even upon your own Principles, which seem not to allow of such Resistance, but in case of an actual and violent Assault upon Mens Religion, Lives, and Properties, and that by open Force of Arms. Now I desire you to shew me, whom the King has ever yet dragoon'd, or persecuted till they would become of his Religion? Or whose Life his Majesty hath taken away, even of the most notorious Traytors, but by due Tryal, and Course of Law? Nay, he has pardon'd divers, several after they were condemn'd, meerly because he was inform'd they were not really guilty of the Crimes whereof they stood condemn'd. And as for Mens Civil Properties, I defy you to shew me any Person's Estate that has been taken from him without due Course of Law; or any Taxes that have been Assessed upon the Nation, but what have been granted by Parliament; or else raised by the Opinion of the Judges, by whom if his Majesty hath been misinform'd, They only ought to answer for it in the next Parliament, who are the only proper Judges of their Miscarriages, without having any Recourse to Force, which the Laws of this Kingdom so much abhors. And therefore make the worst of it you can, all these Grievances already mentioned, were no more than some Breaches upon the outward Splendor of our Church, Religion, or some of our Civil Liberties; whilst the Main and Essential Parts of both continu'd untouch'd; since, God be thanked, we have hitherto enjoy'd the Free and Publick Profession of our Religion, together with our Lives, Liberties and Estates, in perfect Peace, and undisturb'd by any outward Force or Violence from the King, or any Commission'd by him: And as for those Grievances you mention, *viz.* The turning out the President and Fellows of *Magdalen* College, by the late Ecclesiastical Commission, as also the turning out of the Deputy Lieutenants, and Justices of the Peace, and all other Magistrates out of Cities and Corporations, the King has sufficiently redress'd them, by restoring the first to their Places, and by putting all the rest into Commission again, and turning out those that came in their Rooms, and all this before the Prince of *Orange* came over; and I doubt not but his Majesty would have been content to have given the Nation any other reasonable Satisfaction they could have desired in the next Parliament: Which ought to have been patiently waited for until his Majesty thought fit to call it, without going about to right our selves by Force.

F. I confess you have made not only the most plausible Defence you can of the King's late Actions, but have also urg'd the utmost that can be said against those defensive Arms that have been lately taken up by those Lords, Gentlemen, and others who have associated themselves to stand by the Prince of *Orange*, till our Grievances were redress'd by a Free Parliament: But if what you have said be strictly look'd into, I doubt it will prove but a mere Subterfuge to hide the Nakedness of the Cause you have undertaken. In the first Place therefore, let me me tell you, that though I confess the King has not yet Dragoon'd us to *Mass*, nor has made an actual War upon the Lives and Properties of the People of this Nation; yet that he has not only invaded our Liberties, but also endanger'd the Protestant Religion of the Church of *England* establish'd by Law, you your self have not the Confidence to deny; only you will not suppose it to have been done by any Armed Force, and therefore ought not to have been resisted by Force, but to have waited for their Redress by Parliament; which is but an Evasion: For in the first Place it is plain, that the Things complain'd against, in the Prince of *Orange*'s Declaration, do most of them strike at the Fundamental Constitution, both of the Church and State, as I have sufficiently prov'd, and shall do it more particularly hereafter, when there is Occasion. All therefore that remains to be prov'd is this, That all these Breaches, and Violations of our Religion and Civil Liberties, though done under Colour of Law, yet were acted and maintained by Force.

Force. And Secondly, That all other Hopes of Remedy or Redress, unless by joining with the Prince of *Orange*, was wholly taken from us. The first of these I prove thus: It is notoriously known, that for the King to maintain a Standing Army in Time of Peace, has been always declar'd against in Parliament, as contrary to Law, and dangerous to the Religion, Civil Rights, and Liberties of this Nation. Now it is also as certain, that the King has, ever since the Duke of *Monmouth's* coming over, set up and maintain'd a Standing Army in this Kingdom; in which he has also put in as many Popish Officers, and they as many Popish Soldiers (contrary to the Laws of the Land) as ever they could find; besides the many *Irish* Papists that have been of late sent over, for no other Purpose than to be list'd here, and whilst Protestant Soldiers were turn'd out of several Regiments to make room for them: Not to mention the list'ing of vast Numbers of loose and profligate Fellows, and some of them pardon'd Highway-Men, who, provided they had their Pay, would not have stuck to rob or murder any body they had been ordered; as may be sufficiently prov'd, not only by their common taking of free Quarter, but by their frequent taking it in the Houses of Gentlemen, and other private Persons, in divers Places of this Kingdom; and that without any Amends or Redress as I know of, tho' frequently complain'd of at Court: All which being done by the King's Arbitrary Power, without the least Colour of Law, and in Contempt of the Militia, the only legal Forces of this Kingdom, what was this but plainly to declare, that as the King had thought fit to act so many arbitrary Things clean contrary to Law, so he was likewise resolv'd to maintain 'em by Force; since it is plain, that the King never durst undertake to do all these Illegal and Arbitrary Things we have now mention'd, until such time as his standing Army was rais'd? And tho' it is true, Mens Lives, Liberties, or Estates cannot be taken away, unless by some Kind of Force; yet as for those Civil Rights and Privileges, which are the main Bulwarks and Defences of the former, they can only be invaded or taken from us by illegal Judgments and Declarations; which if supported by a visible Force beyond what the Nation (in the Circumstances it was in) was able to resist, this is as much a taking them by Force, as if there had been Resistance made about them.

Thus, if Soldiers come into my House, and say that the King hath given them Orders to quarter there upon free Cost, I suppose you will not deny, but this is a forcible taking of my Goods, notwithstanding I dare not (because I cannot) resist them. The same I may say for a whole Nation, when once oppress'd in their Civil Liberties, and those Oppressions are once back'd and defended by a Standing Army contrary to Law: But that this Army was rais'd chiefly to this Intent, I can give you a remarkable Instance from the Mouth of the late Chief Justice *Wright*, who sent for Officers and Soldiers to make the Scholars at *Oxford* keep silence, because they humm'd at what the President and Fellows of *Magdalen's* had just before said against the Authority of this pretended Court. So that to conclude; from that very time that the King began to keep up an Army, and to list Popish Officers and Soldiers, (tho' utterly disabled by Law to take Commissions, or to bear Arms) by virtue of his Dispensing Power, and all this in Order to back and support his Arbitrary Proceedings, I look upon this Nation under such a Force, as that they might lawfully remove it by Force, whenever they could: And that either by joining with some Foreign Prince, or else by their own Domestick Arms.

But to come to the Second Point to be prov'd, *viz.* That there was no other Means but Force left us to redress those Mischiefs, and to retrieve us out of that sad Condition in which we lately were, as also to hinder us from falling into worse; I shall only suppose (that which I think you will readily grant) that there could be no other Means to cure these Evils, but either by some sudden Change in the King's Inclinations, or else by a Free Parliament: The former you must acknowledge was not possible, as long as he continued of the Religion he is of, and suffer'd himself to be manag'd by the Counsels of the Jesuits, and *French* King; and as for a Free Parliament, what Hopes could there be of that, as long as the King had done all he could to hinder Free Elections, and due Returns of Parliament-Men, by making either Popish or Fanatical Sheriffs, and putting Mayors and
other

other Officers of the like Principles into most of the Cities and Corporate Towns in *England*? Nor can I tell but that Force would also have been used, if they found they could not have compassed their Designs without it, in those Places where Soldiers were quarter'd; since I am credibly inform'd, that at the late intended Elections of Burgesses for *Northampton* and *Brackly*, the Officers and Soldiers quarter'd at those Places, declar'd, That none of the Townsmen should be admitted to give Voices at the Election, unless they would promise to Vote for those that the Court would set up: And the like Instances I believe I might give you of other Places, had I time to enquire into it. And as for the House of Peers, pray consider how many of the Bishops and Temporal Lords the King might have gain'd, either by Threats or fair Promises, to his Party, or at least prevail'd upon to stand Neuters, and not to oppose his Designs; and if these had fail'd, it had been but calling up some Popish, or high Tory, or Fanatick Gentlemen to the House of Lords, and to have sat there as Barons, Peers, *pro tempore*, till this Job was done; and I doubt not but there would have been enough found out, of each Sort, for that Purpose. And that I do not speak without Book, I have had it from Persons of very good Intelligence, that such a Design was lately on foot, and the Court Party thought they had very good Authority for it; since Mr. *Pryn* and Sir *William Dugdale* pretended to show us several Examples of this Kind, as low as the Reign of *K. Henry the IVth*. And a great part of the Design of your Dr. *B.*'s late Books seem to have been only to prove, That the King might not only have Summon'd to Parliament what of the Commons he pleased, but what Lords too, and have omitted the rest; as I have already shown you at our two last Meetings. And sure, if the King had such a Prerogative Two or Three Hundred Years ago, these Gentlemen would not have deny'd his present Majesty the like Power; since they have, in all their Writings and Addresses, declar'd him as absolute as any of his Predecessors.

But to make an end; As for what you say of the King's Redressing the Grievances of the Nation before the Prince of *Orange* came; it is very true, he did by the Advice of some of the Bishops, endeavour to put Things into the same State they were in at his first coming to the Crown. But I very much mistrust the Sincerity of his Majesty's Intentions, since it is plain he never offer'd to do it till the Prince of *Orange* was just upon coming, and that his Declaration had been spread about the Kingdom; and then he did it very unwillingly. And which is also more remarkable, his Majesty, in none of his Declarations, ever disowned his Dispensing Power, or so much as put out Father *Peters* from the Council, or disbanded one Popish Officer or Soldier out of his Army: All which are no great Arguments of the Sincerity of his Intentions. So that I think this was sufficient to convince any reasonable Man, that there was no other Means left us but Resistance, and that by Force, and a hearty joining with the Prince of *Orange* at his Landing.

Now, since this Resistance was not made either in Opposition to the King or the Laws, but for Defence of both, against a Standing Army kept up contrary to Law, and headed by Officers, the greatest Part of which, by not taking the Sacrament and Test, according to the Act made for that Purpose, had render'd themselves wholly incapable of holding those Commissions, and consequently whilst in Arms were to be look'd upon as common Enemies to the Nation. But as for his Majesty's Gracious and Merciful Disposition; as I shall not make it my Business personally to reflect upon him, so I must needs tell you, the Execution of Mr. *Cornish*, Mrs. *Liste*, Mrs. *Gaunt*, for Treasons falsely alledg'd, or else such as Women could scarce be capable of knowing to be so, were no great Evidences of such highly merciful Inclinations.

M. I confess you have taken a great deal of pains not only to set forth the late Miscarriages of the Government, but also to prove that the Army which the King rais'd upon the Duke of *Monmouth*'s Invasion, and which he hath since kept up to prevent either fresh Rebellions at home, or Invasions from abroad, has been merely maintain'd to support all these late Breaches upon our Laws and Civil Liberties, which you say were made upon them. Now this is very uncharitably done; for as his Majesty was forc'd to raise that Army at first, because the late Rebellion in the *West* was too powerful to be quell'd by the ordi-

nary Train'd Bands of the Kingdom, whom he had too much Reason to suspect, by the running over of several of them to the Rebels, not to be so Loyal as they ought to have been : And if his Majesty had not had a small Body of an Army on Foot, the last Summer before the Prince of *Orange* came over, he must, upon his Landing, have yielded to his Terms, had they been never so unreasonable. And though I will not defend the Lifting of Popish or *Irish* Soldiers, or the Granting Commissions to Popish Commanders, yet it is very hard to prove this to be a making War upon the Nation, unless you can suppose there may be War made without Fighting. And as for those Violations of the Laws, which you suppose were made only upon the Presumption of this Standing Army, this is likewise very hard to affirm ; since how can you tell that the Judges and Ministers would not have given the same Opinions and Advices, concerning the dispensing Power, Chimney-Money, and the Ecclesiastical Commission, had there been no Army at all rais'd ; since they might, for ought I know, have presum'd that the People of this Nation had been sufficiently convinc'd of the Truth of the Doctrines of Passive Obedience and Non-Resistance, as not to have needed a Standing Army to back what he had already done, though contrary to Law. But as for the latter Part of your Discourse, I say the People ought to have waited till the King had call'd a Parliament ; and then if they had betray'd their Trust, and given up our Religion and Liberties, as you suppose they would have done, it had been then Time enough, and not till then, for the Nation to have call'd in the Prince of *Orange* and his *Dutchmen* to their Deliverance. So that till this Parliament had been try'd, you could not say that Matters were altogether desperate.

F. I see you do all you can to prove, that the King's Raising an Army, wherein he had Listed so many Popish Officers and Soldiers, (and which were like to be daily increas'd upon us) was no making War upon the Nation, because they had not yet actually robb'd or murder'd People ; and you may with as much Reason tell me, that a Thief upon the Highway does not use any Violence upon the Party he robs, if he should only clap a cock'd Pistol to his Breast, without asking him to deliver his Money. Now, I suppose, you will not deny, but that the Passenger would quickly understand the Meaning of that Sign, and would soon deliver his Purse, for fear of losing his Life. Apply this to the taking of the Customs contray to Law, and to the Chimney-Money that has been rais'd upon the poorer Part of the Nation, and the taking away the Charters from the Corporations, merely through the Terror of this Standing Army ; and see if the Similitude does not exactly fit. And for what you say, concerning the presuming upon the Doctrine of Passive-Obedience, and so might have done the same Arbitrary Things, whether he had rais'd an Army or not ; though I am very glad you confess, that those Doctrines encouraged the King's Arbitrary Proceedings, yet I must beg your Pardon, if I cannot believe the rest. Whatever Thoughts the King might have of the Major Part of the Clergy, Nobility, and Gentry, yet certainly he had no such good Opinion of the ordinary People, who compos'd the *Militia*, (and indeed are the Hands of the Kingdom) since you confess the King did not look upon them as sufficiently Loyal, and therefore was forc'd to maintain a Standing Army for fear of them. So that it seems the Nation was not yet thorough-pac'd in your Doctrines of Passive-Obedience and Non-Resistance, as you would have had them ; but that even this Standing Army, when it was to Fight against the Religion and Liberties of their own Country, was not to be trusted, the King himself was convinc'd of, when he lately left them at *Salisbury* ; and because some of them deserted him, he feared the rest would not Fight, in so unjust a Quarrel.

But as for the rest of your Speech, that the People should have tarried till Matters had become altogether desperate, and that a Parliament had actually given up our Religion, Civil Liberties, and Properties, to the King's Arbitrary Will ; that had been indeed entailing Slavery upon us by a Law, and would have made good the Proverb, of shutting the Stable Door after the Horse is stolen ; and puts me in mind of a Story I have heard of a Gentleman, whose House being beset by Thieves, who were actually breaking in at a Window,

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and that he was about to shoot at them; his over-scrupulous Chaplain (who I suppose had nicely studied your Doctrine of Non-Resistance) desired his Patron to forbear, because the Thieves had not as yet sufficiently declar'd their wicked Intentions by assaulting or robbing any Body in the House: But I suppose the Gentleman was not such a Fool as to take his Chaplain's Advice; and a great Part of the Nation was more sensible of the Dangers they saw hang over their Heads than to follow your Opinion.

M. I see you are very free in your Comparisons, in making the King's late Army little better than Thieves; and then what Opinion you have of the King himself who headed 'em, I leave it to your self to consider; but since Similitudes are no Arguments, I shall not trouble my self to argue this Point any longer with you, since I see it is to little purpose. But yet let your Right of Resistance be what it will in desperate Cases, yet I am sure that divers Lords and Gentlemen of your Opinion can no way justify their renouncing all Allegiance to his Majesty, by adhering to a Foreign Prince, and by their late advising the same Prince to call a Convention, without taking any Notice of the King, or making any more Adresses to him about it, than if he had never been their anointed Sovereign; and indeed it was a great Shame, as well as a crying Sin, for the Nobility, Gentry, and People in and about this great and populous City to let their King be hurried away Prisoner by a Handful of *Dutchmen*, tho' his Majesty hath had since the good Fortune to escape out of their Hands, when he saw there was no other Means to help him.

F. In answer to what you have now said, I must freely tell you; that if the Resistance that hath been made against the Army commission'd by the King was lawful, so has all that has been done in Pursuance of that Resistance been alike lawful and necessary; and therefore what if I should tell you that the King by breaking the fundamental Constitution of the Kingdom, and by twice going away without ever offering to repair those Breaches, and give the Nation any sufficient Satisfaction for the same, has not only put himself in a State of War against the People, but has also thereby ceased to be King; or if you will have it more plainly, has lost and forfeited his Right to the Crown.

M. This is a rare Commonwealth Doctrine, and of the same Batch with that of *Bradshaw's* and *Cook's* Speeches against King *Charles* the First; but I thank God I have learned loyaller Principles, and do firmly believe, that a King of *England* cannot for any Tyranny or Breach of Laws whatsoever, forfeit his Crown or Royal Dignity, as you suppose. But since this is a new Doctrine, I shall not be unwilling to hear what you have to say upon this Subject another Time, since it is now too late to pursue this Argument any further.

F. Before I make any Reply to what you have now said, I desire not to be misunderstood, as if I call all the King's late Army Thieves, or himself the Captain of them, since in Similies it is sufficient if they agree in some common Property, without being the same Things to which they are compar'd; tho' this much I may safely say, that those that take Free Quarter without Consent of the Owners in Time of Peace, and those who support 'em in it, are no better than Thieves; but since you desire to hear my Reasons for this Opinion I have now given you, I desire that we may have another Meeting to debate this weighty Question: and then I will likewise hear whatever you have to say against it. But I must tell you by the way, that you are very much out in making my Opinion of the same Batch with that of the Regicides; for it appears plainly by the printed Tryal of King *Charles* the First, that they acknowledged him for King of *England* at the same Time when they read his Indictment; whereas I affirm the contrary, and say that the present King cannot be judged or deposed by the Parliament or People; yet that he has without any Act of ours absolutely abdicated the Government, and deposed himself: But that I may not seem to speak out of any Prejudice to this King's Person or Government, I desire we may first debate it in general, whether a King of *England* can ever fall from, or forfeit his Royal Dignity,

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let him behave himself never so like a Tyrant: And when that is dispatch'd, it will be then Time to consider, whether the King has so behaved himself or not.

M. I like your Proposal well enough; only let me desire you to come again as soon as you can; for since I hear there is like to be no Term, I intend to visit some Friends in the Country, till I see the Times clear up a little better.

F. I will not fail to wait on you, within a Night or Two; and in the mean Time am your Humble Servant.

M. And I am Yours.

S. f. f.

Bibliotheca



Bibliotheca Politica.

DIALOGUE X.

- I. *Whether a King of England can ever fall from, or forfeit his Royal Dignity for any Breach of an Original Contract, or wilful Violation of the Fundamental Laws of the Kingdom?*
- II. *Whether King William (the Norman) did by his Conquest acquire such an absolute unconditioned Right to the Crown of this Realm, for Himself and his Heirs, as can never be lawfully resisted or forfeited, for any Male-Administration or Tyranny whatever.*

M.  H! Are you come at last; I have looked for you these two Nights; and now began to fear you were not well, or else had distrusted your Cause, and declined another Conference.

F. I beg your Pardon for disappointing you; which yet I had not done, had not some Business hindered me; but however, to let you see I do not decline another Conference with you upon this Subject, pray let us go on where we left off; and tell me freely your Sense of my Notion of the King's Forfeiture, or Abdication of the Government by his Violation of the Fundamental Laws of the Kingdom, and Refusal to repair those Breaches, when he might have done it?

M. In answer to your Demand, I will deal freely with you, and must tell you, that I have perused all Writers that have writ any Thing considerable concerning the Laws of Government, or of Nations; and cannot find in any of them any Thing to countenance your Notion of Forfeiture, or Abdication of an Absolute Sovereign Prince, as I must still take ours to be, notwithstanding all you have yet said to the contrary; unless what you have cited at our Third Meeting, out of *Barclay's Third Book contra Monarchomachos*; where he allows the Subjects to resist their Prince, in case he go about to destroy the Body of the People or Commonwealth, whereof he is the Head: To which I may also add another Case which you have omitted, *viz.* If the Prince make over his Kingdom to another, without the Consent of his People: And I confess, that both *Grotius* and *Puffendorf* agree with *Barclay* in this Notion: Because they look upon both these Cases, as plain downright Renunciations of their Civil Authority, over those whom they were obliged to Govern. But indeed, the first of these Cases is so improbable; nay, almost impossible to happen, that were it not for the over-great Niceness of these Writers, it need not to have been so much as mentioned; since none but a Madman, can ever go about to destroy his whole People; and therefore such a Prince may be Resisted as a Man out of his Wits; and locked up, if ever it should so fall out (as you your self have confessed it hath very rarely) for a Nation to be so unhappy as to have such a Prince; but as for the Second, *viz.* the making over their Supreme Power to a Foreign Prince; that likewise so very rarely

Vj. Grot. de Jur. Bell. L. 1. cap. 4. §. 7, 8. Puffendorf de Jure Nat. L. 7. cap. 8. §. 5, 7.

rarely happens, that it is scarce worth the while to make any Dispute about it : But in all other Cases, they held the Supreme Power of every Nation to be absolutely Irresistible in any Case whatsoever ; and if irresistible, then certainly incapable of forfeiting their Right to govern, by any pretended, or real Violation of the Liberties and Privileges of the People. And *Bodin*, in his first Book *de Re publica*, though he grant, that absolute Princes are obliged in Conscience to keep and maintain all such Privileges which have been granted to the People by either themselves or Predecessors, which are for the good of the Common-wealth ; yet since the Prince is sole Judge, whether these Privileges are consistent with his Supreme Right to Govern and Protect his People, he may therefore have occasion sometimes, not only to Detract from them, or dispense with them in some Cases ; but may wholly break and lay them aside, by turning Tyrant ; yet nevertheless in all these Cases People are still bound not to resist them. And that he looked upon the King of *England* as such an Absolute Monarch, as well as others he there mentions, you may read in the Place I now cited ; where after he has allowed Resistance to be lawful against those Princes, who were not properly Monarchs, as enjoying but a Share of the Supreme Power, and among which he reckons the *German Emperor*, and the Kings of *Denmark*, *Sweden* and *Poland* : But then, when he comes to speak of Real and Absolute Monarchies, his Sense is quite different ; as you may see by these Words ; *Quod si Monarchia quadam est, summâ unius potestate constituta, qualis est Francorum, Hispanorum, Anglorum, Scotorum, &c.* (I shall slip all the rest, because not to our Purpose) *ubi Reges sine controversia jura omnia Majestatis habent per se ; nec singulis civibus, nec universis fas est summi Principis vitam, famam, Fortunas in discrimen vocare, seu vi, seu Judice constituto id fiat, etiamsi omnium scelerum, ac Flagitiorum quæ in Tyrannis convenire antea diximus, turpitudine infamis esset.* Where you may observe that Force or Resistance, by which such an absolute Prince's Life or Regal Power (here called *Fortunas*) are as much forbid, as calling him in Question by appointing Judges to sit upon him. And he there gives us a very good Reason for it, Because all Subjects of what Degree soever, cannot pretend to any Coercive Power over the Person of a Sovereign Prince.

cap. 2.

Ib. Lib. II. cap. 5.

F. We have discoursed enough concerning the Resistance of Absolute Monarchs, at our Third and Fourth Meeting, and therefore I desire we may not fall again upon that Subject, which can produce nothing but needless Repetitions ; and I have already proved, at our Fifth Conversation, that our King is not an Absolute Despotick Monarch, but is limited and tied up by the Fundamental Laws of the Kingdom, from making of Laws, or raising Taxes without the Consent of his People in Parliament ; and that our Government is mixed, and made up of Monarchy, with an Allay of Aristocracy, and Democracy in the Constitution ; the former in the House of Lords, the latter in the House of Commons, as *K. Charles* the First himself confesses, in his Answer to the Parliaments 19 Propositions. And I have farther enforced this from divers Authorities out of our Antient as well as Modern Lawyers ; viz. *Glanvill*, *Bracton*, *Fortescue*, and *Sir Edward Coke*. So that since we have such clear Proof for our Constitution from our own Histories and Authors, nay from the King himself, besides the whole Purport and Style of the very Laws and Statutes of the Kingdom, I do not value the Authority of *Bodin* a Foreigner, whose Business it is to set up the Authority of the *French King* to the highest Pitch he could ; and therefore being sensible that antiently the Government of *France* and *England* were much the same, he could not with any Face make his own an Absolute Despotick Monarchy, unless he had made ours so too ; but this is not the only Error he has been guilty of in our History and Constitution, as I can shew you when there is occasion. But *Arniseus*, who, as well as *Bodin*, is so much for Absolute Monarchs, yet does in his Treatise of Government called his _____ confess, that a Tyrant in an Hereditary Monarchy, who violates all the Laws of Justice and Equity, to the endangering the Ruin of the Commonwealth, doth excidere Jure hereditario, fall from, or forfeit his Hereditary Right. But pray make it out by some convincing Proofs, either from History, or Law, that our Kings are such Absolute Monarchs as you would make them, that by the fundamental Constitution of the Government they cannot be resisted, nor can fall from their Regal Power, let them carry themselves never so Tyrannically ; for I do not see you have been yet able to do it by any Arguments you have hitherto made use of.

Sff 2

M. I have

I. 1. Cap. 9.

M. I have already at our Fifth, as well as at our last Meeting, given you diverse Arguments and Authorities, whereby I proved the Kings of this Realm to be compleat and absolute Monarchs; especially that Place from *Brañon*, where he thus speaks of the King, That every one is under him; and that himself is under none but God; that he has no Peer in his Kingdom, because so he would lose his Power, since an Equal has no Command over an Equal; much more has he any Superior, because then he would be inferior to his Subjects; and Inferiors cannot be equal with their Superiors. Which sufficiently destroys that Notion of yours, That Subjects can be in any Case equal with their Princes, so as to judge and resist their Actions. Which is also farther enforced by another Passage just aforegoing, *de charitis vero Regiis, & factis Regum, non debent, nec possunt Jusficiarij, nec private personæ disputare, nec etiam si in illis dubitatio ulla oriatur, possunt eam interpretari; & in dubiis, & obscuris, vel si aliqua dictio duos contineat intellectus, Domini Regis erit expectanda interpretatio & voluntas, cum ejus sit interpretari cujus est concedere*: From which we may conclude, That the King's Actions were above all Censure and Dispute, much more forcible Opposition of his Subjects. And I defy you to shew me any Passage in *Brañon*, *Fleta*, or even your beloved Author *Forrescue*, that in the least countenances your Doctrine of Resistance, much less your Opinion of the King's Forfeiture of his Crown and Royal Dignity for Tyranny, for the highest Violation of Laws; but rather the contrary, in all those Passages that I have either observed my self, or found quoted out of them by others. For though I grant both *Brañon* and *Fleta* call the King, if he prove a Tyrant, or one that governs contrary to Law, not God's but the Devil's Minister; yet for all that, they no where maintain, that then he ought, or may be resisted by his Subjects; or that they are discharged of their Allegiance towards him. For *Brañon* tells us, in the same Place, That if the King do any Man wrong or Injury, *Locus erit supplicationi quod factum suum corrigit, & emendet; quod quidem si non fecerit, satis sufficit ei ad penam, quod Dominum expectet ultorem; nemo quidem de factis suis presumet disputare, multo fortius contra factum suum venire*. The same he says likewise word for word in another Place, of any other King or Prince, who has no superior Lord, against whom there is no Remedy by Affize (or legal Trial) as against an Equal, but only Place left for the injured Subject to Petition. And *Brañon* gives us a very good Reason for it in this *Maxim, omnis quidem sub eo, & ipse sub nullo nisi tantum sub Deo*. So that though I grant this Moral Obligation, which the King hath to observe the Laws, is farther increased by his Coronation-Oath, as *Brañon* observes in his Third Book *de Actionibus*: But then, as in the Oath of Allegiance, the People swear nothing to the King, but what they are bound to observe unsworn: So the King in his Coronation-Oath promises nothing to the People, but what in Justice and Equity he is bound to perform, whether he swear or not: For, *ad hoc* (saith the same Author of the King) *electus, & creatus est ut Judicium faciat universis, &c. and separare debet Rex, cum sit Dei vicarius, Jus ab Injuria, &c.* But then if he will pervert this great End, for which God made him King; if he will not act as it becomes God's Vicar; if he will obstruct or pervert the Laws, and govern never so Tyrannically; yet still there is left no Remedy to his Subjects by the Law, but Moral Persuasion: For the Laws Imperial of this Realm, have declared him to be a free, unconditioned, and independent Sovereign, exempted from all Coertion, and outward Force, much more from any Forfeiture of his Crown or Regal Authority.

Lib. 2. cap. 7.

H. 7. p. 244,
245. cap. 9.

F. I hope I shall be able to return you a satisfactory Answer to the Authorities you have now brought: For, as for Reasons I see none. In the first Place, as to what you say concerning *Barclay's*, and all other Writers agreeing, that in these Two Cases you mention, the People may resist their Prince, because he does as good as renounce the Government of them, and abdicate the Crown he wore: Pray observe, that they also allow the People to judge for themselves, when the King thus goes about to destroy them, to make over his Crown to a Foreign Prince. Now I desire you to shew me, why the People in a limited or mix'd Kingdom (as ours is) cannot as well judge when the King has broke the Fundamental Laws of the Government, whereby it is distinguished from an Absolute Despotick Monarchy; and hath either actually set up, or is going about to bring in Tyranny or Arbitrary Power; since according to the Rules I have laid down at our last Meeting, the Matters to be judged of may be as plain and evident, not only to a single Person, but to a whole Nation. All that you have

to say against this is, only an Hypothesis you have laid down, without any just Grounds, That the King is a Sovereign Prince, who holds his Crown without any Condition whatever; and therefore free from all Forfeiture of his Crown, or Regal Authority; which is the Point to be prov'd. Now if I have already made out (as I suppose I have) that the King of *England* is not such an Absolute Monarch, as not having the two main Parts of it, *viz.* the Power of raising Money, and making Laws, in his own Disposal, without the Consent of his People; and these reserv'd to them by his own Concessions, or that of his Predecessors, from the very beginning of Kingly Government in this Island; and if I have also proved at our last Meeting, that if we have such Fundamental Rights, we have also some Means left us to keep and preserve them inviolable; and that this Means is only a defensive Resistance, in case they are forcibly invaded by any of the King's Officers or Soldiers, nay, by his own personal Power, if he shall be so ill advised as to join himself with such Instruments of Tyranny; it will then also follow, that such a Resistance is really a Suspension of their Allegiance to the King for the Time it lasts; and till they can see whether there be any Hopes left of a Reconciliation with him, and that he will amend his Errors and Misgovernment. And if he does so, and that he will give his People any sufficient Testimony of his Amendment and Sincerity, by giving up such evil Ministers to Punishment, that put him upon such desperate Courses; I do then readily grant, that the People ought to lay down their Arms, and be again reconciled to their King, and submit themselves to him as before, according to that Clause in King *John's Magna Charta* I have already cited, wherein there is a Power left for the Barons, in case of any Breach of it, to take Arms, and constrain the King by taking of his Castles, Lands, and Possessions, to amend those Transgressions; and when all was thus amended, the Charter says, *Tunc cum fuerit emendatum* (then and not before) *intendem nobis sicut prius fecerunt*, they shall be subject to us, as they were before. But what followed upon this? The King not only refused to observe this Charter, but procured the Pope's Dispensation to be absolved from the Oath he had taken to observe it; and also raised what Forces he could at home, and sent for Foreigners into this Kingdom to support his Tyranny; whereupon the Barons at last were forced to renounce all Allegiance to him, and to declare he had forfeited all Right to the Crown by his Tyranny and Perjury towards his People; as *Mat. Paris* and other Authors shew us at large. Now what the Barons did in the Case of King *John*, may be also done by the People of this Kingdom in all succeeding Times; or otherwise, the King will be in a better Condition after he has done the worst he can by Force of Arms against the People, than he was before; for if (as I have already proved) he may be resisted, till he give the Kingdom Satisfaction that he will surcease from such Tyrannical Courses; and if such Resistance is really a Suspension of Allegiance for the Time it lasts; it will likewise follow, that if the King will still persist in these wicked Courses, he must at last forfeit his Crown, and discharge his Subjects of all Allegiance to him; or else he would be in a better Condition, by his wilful persisting in his Tyranny, than he could be by quitting it, and reconciling himself to his People: For whereas by this Method the best he can expect is to return to the Exercise of the same Limited Power he before enjoyed; if he push Things to the utmost Extremity, he may, perhaps, get the better of his People, and then will set up for an Absolute King by Conquest; or if he fail in that, and be beaten, or taken Prisoner by them, he can lose nothing, since by your Principles he still continues an Absolute Sovereign Prince, as he was before, and must be immediately put in the same State and Ability of destroying the Government, and enslaving the Nation. But your Civil, as well as our Common Law, has a very good Maxim, *Nemo ex proprio Delicto beneficium capiat*, no Man may take Advantage of his own Wrong; and therefore such a Prince ought certainly to lose, and not to gain any thing by his own Illegal and Tyrannical Actions; and therefore I grant, that the King is not tied, by his Coronation-Oath, to observe any new things that he was not, before he was Crown'd, bound to do; only there is the higher Obligation of an Oath added thereunto. So if the King be a Limited Prince, whose Authority depends upon the right Exercise of it, and that he can claim no Allegiance of his Subjects but upon that Condition; if such a Prince wilfully breaks all those Conditions, and absolutely refuses to amend, he must at last forfeit his Crown,

Crown, and lose all Allegiance from his Subjects, or else all their Resistance would signify just nothing; and they would after all be in a much worse Condition than they were before.

I. 7. c. 7.
S 7. 10.

Lib. 7. cap. 2.

Now if this be so, all your Quotations out of *Bracton* and *Fleta* will signify nothing: 'For, as *Puffendorf* very well observes, a Supreme Power may reside in a Limited King, in respect of all his particular Subjects; yet they may all together have a Right to disobey him in those things to which his Power does not extend: For, says he, it does not follow, that because I am not bound to obey him in all things, therefore I must be his Equal or Superior; or because I cannot in any wise command him, therefore he may enjoin me what he pleases. For *Supreme* and *Absolute* are by no means one and the same; for the former denotes the Absence of a Superior, or an Equal in the same Order, but the latter a Faculty of exercising all the Rights of Government, according to his own Judgment and Will.' And therefore this Author in the next Chapter says very rationally concerning resisting of Tyrants in extreme Cases, 'That their Scruple is nothing, who will not admit any Liberty of resisting the most cruel Tyranny of Rulers, because there cannot be supposed any lawful Call of Subjects taking Arms against the Supreme Power, since no Jurisdiction can belong to any Subject over such a Power: As if (says he) that Self-defence were an Effect of Jurisdiction, or that there is required any peculiar Call or Precept for Men in case of extreme Necessity to defend themselves, and to repulse any unjust Force from taking away their Lives or Estates; any more than there is for those who are like to starve, to allay their Hunger by eating, tho' it may be the Meat they eat is not their own, but another Man's.' So far he. And if this be lawful even in Absolute Monarchies, in case of Defence of Life, the same, I say, may be also by the same Reason exercised in Limited Kingdoms, when the King goes about by Force to take away the Religion, Lives, Estates, or Liberties of the People, contrary to Law; since both are founded upon the same Principle, that a King, by destroying the Fundamental Laws and Conditions by which he is to govern, renounces the Government; and indeed so far dissolves it, that he ceases to be King.

Lib. 1. c. 8.

Lib. 9. c. 9.

And tho' I grant *Bracton* and *Fleta*, and other old Lawyers, have not in express Words taught this Doctrine, yet they do it in effect; since the former tells us, *Non est Rex, ubi dominatur voluntas, & non Lex*; that is, he is not a King, when his own Will, and not the Law governs: And in another place, *Rex est dum bene Regit, Tyrannus dum Populum sibi creditum violenta opprimit dominatione*; and in the very same place, (as you have also observed) he tells us, *exercere debet Rex potestatem Juris, ut Vicarius & Minister Dei, potestas autem injurie Diaboli est, non Dei; cum declinat ad injuriam Rex, Diaboli Minister est*. Now, if what *Bracton* says be true, that the King, when he does Injury, is the Devil's Minister, and not God's; I cannot see how he can then act as God's Lieutenant; or why it is not as lawful to resist the Devil's Minister, as the Devil himself. And as to what you alledge out of the same Author, that there is no Remedy left against the King, in case he does Wrong, or oppresses any Man, but only Petition; and after that, the only Remedy is *expectet Deum ultorem*, in case he refuse to do Right: This is to be only understood of Remedy in ordinary Courts of Justice, and by ordinary Means; for otherwise this Author would contradict himself; whereas he tells us expressly, (as I have already noted out of *Bracton* and *Fleta*) *in Populo Regendo Rex habet Superiores, Legem per quam factus est Rex, & Curiam suam, viz. Comites & Barones*, that is, the highest Court of Parliament, called by way of Eminency, the *Earls* and *Barons*; who, he here says, *debent ei frantum imponere*, in case he transgress the Law; and therefore if he go on still wilfully to violate all the Fundamental Laws of the Kingdom, by the same Power by which they may put this Bridle upon him, by the same Power may they also declare (in case of manifest and downright Tyranny,) that he has forfeited his Crown; and tho' they cannot depose him as his Superiors, yet they may declare that he hath by violating the *Original Contract* between him and his People, ceased to be King, and that both themselves and all his Subjects are discharged of all Allegiance to him.

And agreeable to this Opinion, the old *Mirroure of Justices* tells us in the Place I have formerly cited at our Third Meeting, That tho' the King have no Peer in the

the Land, nevertheless, if by his own Wrong, he offends against any of his People, none of those that judge for him, (*i. e.* none of his Justices) can be both Judge and Party. Therefore it is agreeable to Right, that the King should have Peers or Companions to hear and determine in Parliament all Writs and Complaints concerning the Wrongs of the King, Queen, and their Children, of which Wrongs they could not otherwise have common Right. Now can any one imagine that any private Person might have Right against the King, or his Queen, and Children; and that there should be no Remedy left for the general Oppression, and Violation of the Laws and Rights of the whole Nation in general, and that whether the King would or not? For if it had lain in his Power to have hindred it by dissolving the Parliament, this Law had been wholly in vain. So that this will serve to answer your other Quotation out of *Bracton*, concerning the King's Charters, or Grants, (for so I suppose *factis* is to be rendred in this Place) That no private Persons, no, not the King's Justices, could in those Days take upon them to dispute about, or interpret their Meaning; but it was to be left to the King himself. But how? Not to his private Interpretation in his Chamber, or Privy-Council, but to his Interpretation in his Great Council in Parliament; which, as I proved in our Fifth Meeting, consisted of all the great Officers of the Crown, together with the Judges; who, the King being present, were in the Nature of Counsellors or Assessors to him; and there all Matters not determinable in ordinary Courts, were heard and determined; and of this Nature were the King's Charters: tho' now that Power, since the Dissolution of that great Court, is fallen partly to the *Chancery*, and partly to the *King's Bench*, who do both of them at this Day judge of the King's Grants, whether they are according to Law, or not; and can declare them to be void, if they are not.

M. This is right *Rump-Parliament Doctrine*, or rather worse, (if worse can be;) for whereas *Bradshaw*, and those Mock-Judges, appointed by that pretended *Juncto*, plainly asserted an Inherent Right in the People of *England*, and the Parliament, as their Representatives, to call the King to an Account, and to judge and condemn him, as his Superiors; you, to evade that Doctrine, as being expressly condemned both by the First and Second Parliament of King *Charles II.* in the Statutes I have already cited, do fall into a much more dangerous Error. For whereas those Men supposed it was only in the Parliament (and in themselves, as the Commons of *England*), to judge and depose the King, and to put him to Death for Tyranny; you take this Power out of their Hands, and place it in every private Person, which you call the *diffusive Body* of the People; which are not only more fallible, but more dangerous Judges, as being more apt to Errors and Mistakes. But if you would have better consider'd the Words and Meaning of that Act I have formerly cited of King *Charles II.* for attainting the Regicides, you would there find these Words in the Preamble to that Act expressly against you: 'Whereby it is by both Houses of Parliament declar'd, That by the undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, *nor the People collectively, or representatively, nor any other Persons whatsoever, ever had, have, have, or ought to have any Coercive Power over the Persons of the Kings of this Realm.*' Where you see by this Act, that all Power of judging or deposing the King is expressly renounced, not only for the Two Houses of Parliament, but for the whole People, whether collectively, or representatively, or for any other Persons whatsoever. But as for what you say, that the King in case of a wilful and constant Violation of the Fundamental Laws of the Kingdom, is not then deposed by the People, but deposes himself, and thereby renounces the Government over them; this is a meer Evasion, which you, and those of your Party, have now found out to make the King to have forfeited his Crown, without any Judgment of the Parliament or People; for who can believe a King will ever depose himself, or do any Act, besides an express Resignation of the Crown, whereby he can ever be construed to have parted with it. And therefore your Notion is no better than the Equivocation of the Jesuits; who, if they are ask'd whether it be lawful or not for Subjects to murder their Kings, will tell you by no means; but it is still with this mental Reservation, that Princes excommunicated and deposed by the Pope, do thereby cease to be Kings; and therefore their Subjects being thereby discharged of all their Allegiance to them, they may not only be

12 C. II. 2. c. 3.

resisted,

resisted, but murdered by them as Tyrants and Usurpers. Put the People here instead of the Pope, and see if the Parallel does not hold exactly.

But as to your Argument, from a Necessity of Resistance, to a Necessity of laying the King aside, because he has forfeited all Rights to the Crown, upon his persisting in the Violation of the Fundamental Laws, and refusing to make the People Satisfaction, and this upon the Account of I know not what Original Contract; for as to the Coronation Oath, I see you dare not insist upon it; so that I do not now wonder that the Gentlemen of your Principles are so violent for this Right of Resistance, since it is only in order to introduce your Darling Doctrine of the Peoples Power of deposing or laying aside their Kings (as you term it) whenever they shall judge they turn Tyrants, and have thereby forfeited their Crowns; which is a most dangerous Doctrine: And if it should take Effect, Princes had need look about them, since the People may make up such a Pretence (for ought I know) even against the very best of them, that are now Regnant in *Europe*.

But sure absolute Monarchs ought not to be outed of their Crowns by strained Consequences, or forced Interpretations of Laws; therefore pray shew me this Original Contract you so much insist upon, and those Conditions on which you suppose our limited Monarchs hold their Crowns. I confess if you could shew me any Clause in our Laws, or Ancient Forms of the Coronation of our Kings, as there was at the Coronation of the Kings of *Arragon*, wherein the Chief Justice on the behalf of the People plainly told him, that they made him King upon this Condition, that they would have more Power than himself; or that in the conferring of the Regal Power, it was expressly reserved in what Cases it should be lawful for them to resist the King, or to absolve his Subjects of their Allegiance, as *Bodin* tells us it was expressly inserted in the Coronation Oath of *Henry II. Duke of Anjou* (afterwards King of *France*;) when he was made King of *Poland*; that if he broke his Oath and violated the Laws and Privileges of the Clergy and Nobility of *Poland*, then the People of that Kingdom should not be obliged to render him any Obedience: I grant then, that the Liberties of such a People might be preserved. But the King that took upon him the Regal Power upon such Conditions, would not be properly a Monarch, but an Inferior Prince, liable to the Judgment of his People, whenever he really did, or that they imagined he had thus violated their Laws, since the Supreme Authority would still reside in them.

But indeed the Case (God be thanked) is much otherwise with our Monarchs who are Kings by Right of Inheritance, whether ever they take any Coronation Oath, or not: As King *Edward* the First was, whilst he was in the *Holy-Land* almost Two Years before he could come over to be Crown'd; and King *Henry* the Sixth was not Crowned till the Eighth Year of his Reign, as well as of his Age. But that our Kings are so by Inheritance, and by the Laws of God and Man, previous to any Coronation Oath, or Consent of the People, is expressly declared by the Act of Recognition of King *James I.* And that Treason could be committed against him before he was Crowned, Sir *Edward Cooke* tells us in *Calvin's Case*, was the Opinion of all the Judges of *England* on the Plot for which *Watson* and *Clerk* the Priests were Executed, and Sir *Walter Rawleigh* Condemned. So that what you have now urged from Reason, or Authority of our Ancient Lawyers, is either quite mistaken, or else does not reach the Matter in Hand: That it cannot be made out from Reason, is plain; since your whole Argument is built upon this false Foundation, that it is lawful in some Cases to resist the King, as upon a notorious Breach of the Fundamental Laws, and therefore it is necessary also to declare him to have forfeited his Crown, if he persist in this Violation; whereas I deny your Assumption, for I hold it utterly unlawful to resist on any Pretence, or for any Cause whatsoever: And therefore it is impossible for the King, who (as I said but now) is an absolute unconditioned Monarch, to forfeit his Crown for any such Violation of your Original Contracts, or Fundamental Laws of Government. So that let me tell you, the Citations you have brought out of History, as also *Bracton* and *Fleta*, do not prove either the one or the other of these. For First, As to the Clause in King *John's* Charter concerning Resistance, and the Barons having a Power thereby to constrain the King to amend his Violations of it, by making War upon him, and that they should not

*Vid. Hotoman
Franco-Gallia:*

*Vid. Cook's
7th Repo.*

not return to their former Allegiance till all was redressed; make the most of it, it could be no more than a particular Concession for himself alone, and was not intended to reach his Successors, who are not at all mentioned in this Clause. And that it was never intended to reach them, may further appear, because that this Clause of Resistance is omitted out of all the subsequent great Charters, that were granted by *Henry III.* or his Son *Edward I.* and instead of this, it was thought a sufficient Security upon the last Confirmation of these Charters in the 37th Year of King *Henry III.* for the Kings, Bishops, Earls, and Barons to agree, that the Archbishop of *Canterbury*, and all the rest of the Bishops, should declare all those that wilfully transgressed or infringed the great Charters in any Point, excommunicated *ipso facto*, not excepting the King himself, according to the Form which you will find in *Mat. Paris*, and other Writers of this Transaction. But for the Places you have cited out of *Bracton*, there is none of them reach the Point in Question; for as to the first, *Non est Rex ubi dominatur voluntas & non Lex*; the Meaning of it is, not that he is no King, but that he does not act as a King, but a Tyrant, when he thus governs by his meer Will, and not by Law. And to the same Effect is the next Passage, *Rex est, dum bene regit; Tyrannus, dum Populum sibi iradidum violenta opprimat dominatione*; all which we readily grant: Yet since he is still an absolute Monarch, all Writers hold, that his governing without or against Law, cannot give the Subjects a Power to resist him, much less can it be construed as a Renunciation or Forfeiture of his Imperial Power. And therefore tho' it is true, that as *Bracton* and *Fleta* tell us, whilst he thus acts, he does not act as God's Lieutenant, but the Devil's Minister; yet does it not follow that we may therefore resist him with carnal Weapons, or Force; since we cannot so resist the Devil himself. And tho' he may in this Matter of Breach of the Law, which he has sworn to observe, act as the Devil's Minister, yet notwithstanding in all other Points of Government, as in the Punishment of Robbers, and other notorious Offenders, and in the due Administration of Justice between Man and Man, he still acts as God's Lieutenant; and it is much better that we should have some Civil Government, tho' mixt with Tyranny and Oppression, than that we should fall into all the Mischiefs and Confusions of a Civil War, nay, that Anarchy too which has often been produced by it. And tho' I confess the last Place you have made use of, to wit, *Rex habet Superiorem, Legem, & Curiam suam*, viz. *Comites & Barones, &c.* who ought, if he transgress the Law, to put a Bridle upon him; yet by this (as I have already proved) neither *Bracton* nor *Fleta* could mean any co-active Force, but only a Moral Restraint upon the King by Petitions, Remonstrances, or denial of Aids, till he would be reform'd by fair Means: But that it does not go farther, appears by the Parallel *Bracton* there makes between our Saviour *Christ* and the Virgin *Mary*, who being both free from the Law of *Moses*, yet voluntarily chose to be obedient to it; which sufficiently proves that those Authors never designed that the Parliament should make the King, by Force, or whether he would or no, to amend his Faults; since that was, as you your self must acknowledge, against their very Institution; since both their Meeting, and their Dissolution, wholly depend upon the King's Will.

E. I confess you have made a long and elaborate Speech in answer to my Opinion, that the King may forfeit his Crown, that is, by his own Act cease to be King; but I shall be able to give you a satisfactory Answer to all this, if you please to take it. In the first Place therefore I cannot but observe, that all your Discourse depends upon Two Principles, alike false; first, that no absolute Monarch can by his own Act forfeit or lose his Right to the Government, without a formal Resignation of the Crown: Secondly, That the Kings of *England* have ever been such absolute Monarchs. Which if they are both great Mistakes, all that you have said on this Head falls of it self. Now that a King, tho' an absolute Monarch, may do such an Act as shall make a Forfeiture of his Crown, without any solemn Resignation of it, you your self are forced to allow, in the Two Cases you have put, viz. that of such a Monarch becoming an open Enemy to his People, and going about to destroy them; and that of his making over his Kingdom to another, without the Peoples Consent. Now if the diffusive Body of the People in an absolute Government, can judge of these Two Cases whenever they happen, without appealing to any general Council, or Assembly of the whole Nation; I desire to know (for you have given me no Answer to this Question)

Why it may not be as easy and lawful for the the People to judge without a Parliament, when the Fundamental Laws of the Constitution are generally and wilfully broken and violated ; and that Violation persisted in by the King, for the Introduction of Tyranny and an Arbitrary Government ? Since the Rules I have laid down to know it are but a few, and easy to be known and judged of by the most common Capacities.

Now that a Superior or Governor may lose all that Power and Authority he once had, and that without any Act of the Party governed, may appear by those great and natural Relations of a Husband and a Master ; in the former of which, if a Husband, in the State of Nature, use his Wife so cruelly, that she can no longer live or cohabit with him without Danger of her Life, I doubt not but she may quit him ; and may also when she is out of his Power, marry her self again to another Man that will use her better : So in the other Relation of a Master, if such a one, in the State of Nature have a Slave, and will not allow him sufficient Cloaths, Victuals, or will beat him, or use him so cruelly for no just Cause, that he cannot enjoy the ordinary Comforts of Life ; no Man will deny but that such a Slave may lawfully run away from such a Master, and is at Liberty either to live of himself, or to chuse another Master if he think good : And this Instance is much more strong in an hired Servant, who is to serve his Master for such and such Wages, or to do such and such Work, and no other ; if in this Case the Master refuse to pay him his Wages, or put him to do other Work than what was agreed upon between them, or instead of an hired Servant will make him his absolute Slave ; in these Cases no Man can doubt, but by this unjust Treatment of the Master, the Servant is discharged of his Service, and may go whither he pleases. And of these Actions, I have already proved at our first Meeting, the Party injured, be the Wife or Servant, must be the only Judges in the State of Nature, where there is no Civil Power over them ; or else if the Husband, or Master, shall judge for himself, the Wife or Servant is never like to get any Redress. Apply this to the Case of a limited or conditional King, and his Subjects, and see if it be not absolutely the same, upon the total Breach of the Original Constitution of the Government ; and whether the Bond of Allegiance is not then as absolutely dissolved, by the sole Act of the Prince, without any authoritative Power in the Subjects, as it is in the Case of such a Wife or Servant, by the sole Act of the Husband, or Master, without any Superior Authority, in such Wife or Servant, to quit them, and so to discharge themselves of their Wedlock, or Service.

Therefore as to your Accusation, that my Notion is worse than that of the Rump-Parliament, that put the King to Death ; I deny it. For they supposed that there was no way of being rid of a Tyrannical King, but by making the People (and consequently the Parliament as their Representatives) his Superiors or Judges, to call him to an Account, and judge and punish him for his Tyranny. This I abhor as much as your self ; for I grant that a King cannot be properly the Supreme, and at the same Time own another Power above him, to punish or call him to an Account for his Miscarriages : But this Power that I insist on, is not (as I have all along told you) a Power of Punishment, but a Right of Resistance for Self-Defence, in the first Place ; and of judging and declaring the King to have forfeited his Crown, or Right to govern, if he persist in his Tyranny, without any Amendment or Satisfaction given to the People.

Nor is this Doctrine of the People's thus judging for themselves, so dangerous as that of our late Commonwealth's-Men, who put this Right of judging when the King had thus forfeited his Power, in the Parliament, of which they thought themselves the only lawful or necessary Members ; but indeed it was not so, for they still supposed him to be their King, and yet at the same Time pretended to arraign him, as you may see by the Title of the Charge, or Indictment they drew up against him ; all which I grant to be altogether unjust and illegal. But it is not more, but far less dangerous, to put this Power of judging when the King has thus dissolved the Government, and forfeited his Crown, upon such notorious and wilfull Breaches of the Fundamental Laws, in the whole or diffusive Body of the People, rather than in the Parliament, or great Council of the Nation. For as to your Assertion, that the whole People are more fallible, and consequently more dangerous Judges in such a Case, than the great Council, I deny it ; since all the Matters of Fact must be so evident and notorious to the Senses and Feeling of the greater Part of the People, that there can be no

Doubt

Doubt or Denial of it, by any reasonable and indifferent Judges. And the greatest Part of the People are willing to live in Peace, without making any Disturbance or Alteration in the Government, if it may be avoided. Whereas in any great Assembly or Council, there are many, and those of the most eloquent and leading Men, who commonly carry the rest which way they please, who are govern'd by Faction, Ambition, or Self-Interest; and upon all, or some of these, &c. may be desirous to raise Civil Wars, or to declare the King to have done Things that require Resistance, or to have forfeited his Crown, when indeed he has not. And for this the very long Parliament you mention is an evident Example, since you cannot but grant, that if the Differences between the King and that Parliament had been freely left to the Judgment of the whole People, there had never been a Civil War at all, nor had the King ever been beheaded; since it is notoriously known, that before the Parliament stirr'd up the People to War, by seizing of the Militia, they were not at all inclined to it; it being a restless, factious and ambitious Party of Men on both Sides, who brought on the late Civil War. Not but that I defer much to the Judgment of a free and unbiass'd Parliament, who may confirm and declare what the diffusive Body of the People have already justly done, to be right and lawful; which may be as great a Satisfaction to private Men's Consciences in Civil Disputes, as a general Council is in Spiritual Controversies about Matters of Religion; wherein, tho' such a Council cannot make new Articles of Faith, yet we Protestants hold that it may declare what were anciently believed. But if the People have a Right of judging during the Intervals of Parliament, when the King has notoriously broke the Fundamental Constitution, and so may make Resistance accordingly, (as I have already proved they have) since otherwise the King may absolutely refuse ever to call any Parliament at all, or at least may not let them sit till all Grievances are redress'd; so I cannot see why they may not also judge when the King has so wholly broke his Original Contract, and so obstinately persisted in it, as to create a Forfeiture of his Crown; since the one is not harder to judge of than the other. Nor is your Parallel between our Opinion and that of the Jesuits at all true; unless you could also prove, that I had put the same Authority in the People to depose their Kings by a Right conferred on them by God, as the Jesuits do in the Pope by such a pretended Power, as superior to that of all the Monarchs in the World. But there is nothing like it in my Hypothesis. Since I do neither allow the People to judge or depose the King, much less to put him to Death, tho' a Tyrant; but only to judge, and declare, when he has made such notorious Breaches on the Fundamental Constitution, as do necessarily imply a Forfeiture, or rather an implicit Abdicacion of his Royal Power, and thereby deposes himself.

But to come to the Second Point, to prove, that our Kings were never absolute Monarchs, or had the sole and absolute Authority over the People of this Kingdom; and if so, that there was somewhat still reserv'd by the People at the first Institution of the Government, and which the King by the Original Contract, when he or his Ancestors took the Crown, must be still supposed as bound to maintain. Now that there must have been such a Thing as an Original Contract (however light you please to make of it) I thus make out. You may remember that at our Fifth Meeting, I proved, that at the first Institution of Kingly Government in this Nation, it was not by Right of Inheritance, but Election. 2. That this Election was made either by the whole Body of the People in Person, or by their lawful Representatives in the great Councils, or *Mycel* Synods of the *English Saxons*. 3. That this great Council did then reserve to themselves these material Parts of Government: First, A Right of meeting or assembling at stated Times of the Year, and that without any previous Summons from the King. Secondly, A Right of proposing, or at least of assenting to all Laws that should be made in all future Times. Thirdly, A Right of granting general Aids or Taxes for the People, and that without their Consent no Taxes could be impos'd. Fourthly, and as subsequent to all these, a Right of agreeing to all Wars, and Treaties of Peace, to be made with Foreign Nations. But the first and last of these, tho' I could prove to have been constantly observ'd, during the *Saxon* Government, yet since the People have parted with their Right in these Matters, I shall not now insist upon them, only that the People have still a Right to Parliaments, once in Three Years at least, and oftner if Necessity require.

These then being the Original Constitutions of the Kingdom, the King must have either entred into a Compact with the People, for the maintenance and observation of these fundamental Rights, or else it must have been left to his Discretion, whether he would suffer the People to enjoy them or not. If the latter had been true, then I grant they had made him an Absolute Monarch, and had left it wholly at his Discretion, whether they should enjoy these fundamental Rights and Privileges or not. But it appears plainly to the contrary that they did not, for I can prove (if need be) that the Succession to the Crown was at first Elective, and not Hereditary. Now in all Elective Kingdoms of the *Gothick* Model, it is very well known that their Kings were so far from being absolute, that the Assembly of Estates, or great Councils of those Kingdoms, reserved to themselves a Power of Deposing their Kings for Tyranny and Mis-government; as I have already proved was frequently done, not only in *England*, but in all the Neighbouring Kingdoms, without any Imputation of Rebellion. And I have also given you a Quotation out of the ancient *Mirror of Justices*, which tells us, that upon the Election of the first King of this whole Island, “ The Princes that chose him then caused him to swear, that he would maintain the Holy Christian Faith with all his Power, should Rule his People justly without regard to any Person, and should be obedient to suffer Right or Justice, as well as others, his Subjects. And if this were not an Original Contract, I know not else what to make of it.

Mirror. p. 2.

*Spel. Concil.
Loges Guil.
cap. 6. Hoven-
den's Annals
Part 2. p. 608.*

Cap. 24.

And now that upon a Failure to perform these Things, a Forfeiture of the Crown would follow, and that thereupon he would cease to be King; Pray see those ancient Laws in *Lambard's Saxon Laws*, and *Sir H. Spelman's Councils*, which go under the Name of King *Edward the Confessor's*; (though they were made as *Hoveden* shews us, in the time of King *Edgar* his Grand father) where among those Laws of King *Edward* that were confirmed by *K. William I.* this is one: *Rex autem qui est vicarius summi Regis ad hoc est constitutus, ut Regnum terrenum, & populum Domini. & super omnia sanctam veneretur Ecclesiam, & ab injuriis defendat, & maleficos ab ea evellat, & penitus disperdat, quod nisi fecerit nec nomen Regis in eo consuebit*; that is, not so much as the Title of King shall remain to him. And in the same Sense *Bracton* is to be understood, in his Second Book; *Est enim Corona Regis facere Justitiam, & Judicium, & pacem tenere, sine quibus consistere non potest, nec teneri*; which may be thus render'd, That it is of the Royal Office or Dignity, (for so I construe *Corona Regis*) to do Justice and Judgment, and to maintain Peace; without the Observation of which, his Crown or Royal Dignity cannot hold nor consist. So that this is but an Explanation of my Sense of that other Passage I have already cited out of this Author, *Non est Rex ubi dominatur voluntas, & non Lex, i. e.* He is not a King, (that is, ceases to be a King) when his Will, and not the Law Governs; and he gives the Reason for it in another Place, speaking of the King, who was not then Hereditary, for, *ad hoc electus est Rex, & constitutus, ut faciat Justitiam universis*.

Therefore if he thus totally deviate from the End of his Creation, his Authority ceases, and is at an End. So that nothing is plainer, than that our Ancient Laws have declared the King to have lost the Title and Right of being King, in case of notorious Tyranny, and Breach of this Original Contract; and that the ancient Lawyers *Bracton* and *Fleta*, gave the same Interpretation of this Law, is also as plain.

So that what you have said to evade or misinterpret the Authority of these Authors, as to the Points of Non-Resistance and Forfeiture of the Regal Power, will signify nothing; for as to what you say of that Clause of Resistance being left out in all subsequent Charters after this of *K. John's*, and therefore that it was no binding Law to his Successors, I do not deny the Matter of Fact, that it was so omitted; yet that does not prove, that the whole Nation ever renounced their Right of Resistance in the Cases mentioned; since as they exercised it before that Charter was given, so also they continued to do it in the Reigns of his Successors; as I have shown in the History I have given you of this Resistance at our last Meeting. And therefore constant Practice is the best Interpreter of this Fundamental Law. As for my Evasion of that Place of *Bracton*, *Non est Rex, &c.* I have sufficiently confirmed my Sense of it, by this Law of *K. Edward*, as also by other Passages out of this Author; and I will leave it to any Man to judge which is the most genuine Interpretation of this Place, He is not a King, (that is, ceases to be so) when his Will, and not the Law Rules; or, *That he does not act as a King,*

as

as you interpret it. But you grant such a King is really a Tyrant, yet may not be resisted, nor can lose his Power. And why? Because it is absolute and unconditional. This is to take that for granted which we deny; for he that hath not the full and sole Power of making Laws, and imposing Taxes, is not absolute Monarch, but the King of England has neither of these; *Ergo, &c.* And if this be so, see what Grotius says expressly of such a Prince (as high as he is for the Non-resistance of Absolute Monarchs.) *Lib. 1. Cap. 4. Sect. 13.* *Si Rex partem habeat summi Imperii, partem alteram populus, aut senatus, Regi in partem non suam involuntis vis justa opponi poterit, quia catenus Imperium non habet; quod locum habere censeo, etiamsi dictum sit, belli potestatem penes Regem fore; id enim de Bello externo intelligendum est, eam aliqui quisque imperii summi partem habeat, non posset non jus habere eam partem tuendi, quod ubi sit, potest Rex etiam suam partem belli jure amittere:* Where you see, that the Opinion of this learned Author is, That a limited King may not only be resisted in Case he invade that Part of the Supreme Power that does not belong to him, but may also lose his own Share of the Empire by Right of War. Now further, that our ancient Lawyers believed, that our King had not the whole Power, or *plenam potestatem* in their Hands, appears by that Passage so often cited out of *Bracton*, *Rex habet superiores. Legem per quam factus est Rex, & curiam Baronum, &c.* which you strive to evade, by supposing I know not what Moral Superiority, which the Court might only exercise towards the King by Remonstrance, or Petition, in setting forth his Deviations against a Law. But what if he had refused to hearken to them? Why then, say you, all the Remedy was *expectet Deum Ultorem*? Now if this was all, then every private Subject had such a Moral Superiority; for *Bracton* says of them, *locus erit supplicationi, ut factum corrigat, & emendet, quod si non fecerit, &c.* then he was to look for God to revenge it. But *Bracton* and *Fleta* are more express in this Point, and say, that this *Curia Baronum* were not only *Socii* but *Magistri*; for say they, *qui habet Socium, habet Magistrum*: So that surely this Bridle must have been somewhat more than bare Prayers, Remonstrances, or denial of Money; nor is your Reason to the contrary cogent, since it is only drawn from a Simile between Christ, the blessed Virgin, and the Law of *Moses*. Now you know very well that Similes are not Arguments, nor can any Argument be drawn from them. But indeed it plainly appears by what follows in *Bracton*, that he supposed this Power to be somewhat more than merely Moral; for he there says, that if the People cry to God for want of Justice against the King, he will send for a Foreign Nation, who shall come and destroy both them (*viz.* the Barons) and their King; which would have been a vain Threat, if He might have chosen whether he would be reformed by them or not.

And that King *James* the First. himself was satisfied of this Original Contract, may appear by his own Words, in a Speech to both Houses of Parliament, 1609; where he expressly tells them, that the King binds himself by a double Oath to the Observation of the fundamental Laws of his Kingdom; *Tacitly*, as being a King, and so bound to protect, as well the People as the Laws of his Kingdom; and *Expressly* by his Oath at his Coronation; so as every King in a settled Kingdom, is bound to observe that Paction made to his People by his Laws, in framing the Government as agreeable thereunto, according to that Paction which God made with *Noah* after the Deluge, *&c.*

To conclude; if the first King of the *Saxon* Race took the Crown upon Condition to maintain the Fundamental Laws and Constitution of the Government, and that he was never invested with an absolute Despotick Power of making Laws, and raising Money at his Pleasure; but the People reserved to themselves their Share of both, at the first Institution of the Monarchy; all those Princes that claim by Virtue of their Right, are tied by this first Original Contract, whether they ever took any Coronation Oath, or not. Nor though the Crown is now become no more Elective, does it at all alter the Condition or the Limitation of his Ancestors, as long as the present King holds by, and under the same Title, and by virtue of the same Original Contract; since, as it was by the Peoples Will that it was at first Elective, so it was also by their Will, that it became successive; since every En-tail of the Crown upon Heirs, can only proceed from the People's Agreement or Consent to maintain it as a standing Law; or else every King might alter it at his Pleasure.

As for your next Reply, That if we resist the King, because when he turns Tyrant he acts not as God's Lieutenant, but the Devil's Minister; for that tho' it is lawful to resist the Devil, yet we cannot use carnal Force against him: This Assumption is precarious; since if we can suppose the Devil does ever use carnal Force, we may also repel the same by Force; or else those famous Stories of Witches and Spirits being afraid of, and flying from naked Swords, are all false. I beg your Pardon for speaking so long, which I could not well contract into less Compass, without passing by your Arguments and Answers to my Quotations.

M. You have indeed outdone me in making long Speeches; but I have heard you patiently, because I cannot deny but that you have argu'd fairly, had it been upon a right Foundation; but since it is not, pray give me Leave to set you right, and shew you, that notwithstanding all you have urged to the contrary, yet all our Kings since the Conquest were absolute Monarchs; and if so, not only irresistible upon any Breach of their Coronation-Oaths, but also have been invested with such an absolute, uncondition'd Power, as can never be lost or forfeited upon account of the highest Acts of Tyranny. But before I come to my Proofs, give me Leave to say somewhat to those last Citations you have brought from King Edward's Laws, as also from *Braeton* and *Fleta*. First, As to that Law you have cited, that passes under the Title of one of those confirmed by King William the Conqueror; give me Leave to tell you, that I much question whether it be genuine, and not foisted in by some of the Monks that had the keeping of the Copies of those Laws in their Monasteries, after the Original it self was no more to be found. For in the first place, I must observe, it does not favour of that absolute Power that I take King William to have acquired by his Sword, to own his Royal Dignity forfeitable; or that he could lose the Name of King upon any Account whatsoever: as this pretended Law seems to intimate, by these Words, *nec nomen Regis in eo constabit*. Now that it strongly favours of the Ignorance of the Monks, I shall shew you by the very Law it self, wherein the chief Points for which the King must lose his Royal Title, is not only if he does not defend his Earthly Kingdom, but also the People of God, that is, the Clergy; and also shall fail to reverence Holy Church, that is, the Bishops and Clergy; of whom the Monks looked upon themselves as the chief, and most considerable Part; as also, if he fail to destroy Evil-doers, (that is, Hereticks out of the Church), then, forsooth, not so much as the Name of King must remain to him. Now, pray see the Consequence of this, and whether you will own this to be a Fundamental Law of the Kingdom; for then at this rate, Henry VIII. who suppressed Monasteries, and took away Abby-Lands, and let injurious Persons spoil the Church by Sacrilege; and also all other Princes who have not extirpated those, who, when this Law was supposed to have been made, would have passed for Hereticks, (that is, all Protestants,) must have all forfeited their Royal Dignities: And consequently the Pope did Henry VIII. and Queen Elizabeth no Wrong, if in Pursuance of this Law, he excommunicated them, and declared they had forfeited their Crown; since this Law says, that Pope John testify'd this Truth, *quod nomen Regis perder*. But nothing makes out more evidently to me the Forgery of this pretended Law, than the notorious Faults there are in the Chronology, where the Sentence of Pope John against King Childerick, is mention'd as an Evidence to make it good; whereas indeed, it was not Pope John, but Zachary, who gave this Sentence. But in *Hovenden's* Copy of this Law, there is yet a more gross Error; for it makes Pepin, and his Son Charles, to have writ to King William the Bastard, upon their hearing this definitive Sentence so wisely given concerning the Title of a King; all which is so notorious a Piece of Folly and Ignorance, that it needs no other Confutation. But granting that Part containing the Law it self, to be genuine, it does not at all set forth your Original Contract, or make it a Forfeiture in the King to do any of those things which you supposed to be main Parts of the Fundamental Constitution; only says in general, 'That unless he defend his Earthly Kingdom, and the People of God, and reverence Holy Church, by defending it from injurious Persons, and removing Evil-doers from it, the Name of the King will not belong to him.' Now all this the most absolute Monarch in Christendom, even the King of France himself, will say he performs to a Tittle. And therefore there is no fear of a Forfeiture for any King, tho' never so Absolute and Tyrannical, upon these Terms, unless he will do that which I think he is too wise ever to go about, to destroy his People wilfully, or to fall upon the Church and Clergy.

In Answer to your first Authority out of the *Mirror*, I think it of no Authority, since that Author writ in the Time of *Edward I.* and *II.* long after the *Saxon* Times; and besides, his Relation of Forty Princes chusing a King, sounds like a Fable, there being no such thing mention'd in the *Saxon* Chronicle, or any other ancient Historian. And as for the rest of the Places you have cited out of *Bracton* and *Fleta*, to prove this Notion of a Forfeiture, I must freely tell you, that they do not seem to me to come up to the Point for which you bring them; for as to that Place you have cited out of *Bracton*, *Non est Rex, &c.* you and I differ about the Sense of it; and I see no Reason why I may not still keep my own Opinion. The other Place I confess seems more express, viz. 'That it is the Crown or Dignity of the King to do Justice or Judgment, without which it cannot hold or consist;' This also does refer only to such Justice and Judgment as the King is to give and distribute between Man and Man, without any Relation to his own Actions towards his Subjects. And if a Prince will not do this, either by himself or Deputies, I grant, his Crown or Royal Dignity cannot long subsist to be maintain'd; since this will bring all things to utter Confusion, so that Strangers will soon be encourag'd to invade the Kingdom; nor will the People be at all concern'd to assist such a King against them, since they can be in no worse a Condition under a Stranger than under him. But as for the ancient Superiority of the Law and Court of Barons, there mention'd, to be over the King, that still seems to me to be only a Moral, and not a Coercive Power; since the Law alone is but a dead Letter, and can force no Man of it self, without the Power of Men to support it; and there can be no Interpreters of this Law but the King, and his Judges out of Parliament; and the Parliament sitting, that alone, that is, not the House of Peers or Commons alone, or both together; but the King, Lords, and Commons, jointly, that can interpret Laws. But let the Power of this Court of Barons have been anciently what it will, it seems to relate only to the Peers and Tenants in *Capite*, and not to the Commons at all, since none ever heard them called the King's Companions: And as for any Coercive Power in the Two Houses over the King, I have already shewed you, that the two first Parliaments of King *Charles II.* have expressly renounced it for themselves and the whole Nation; and therefore I must still stick to my first Conclusion, That the King is not to be resisted upon any Terms whatsoever, neither can he forfeit his Royal Dignity by certain general, antiquated Laws; or by the forced Interpretations of some doubtful, obscure Passages in our ancient Lawyers. But I shall now proceed to prove, -----

F. I pray give me Leave to reply to what you have now said, before you go to any new Head. First, In answer to what you have now objected against the Authority of that Ancient Law-Book, the *Mirror*, I think you have no Reason to object against it, since the Author is supposed by our Antiquaries, to have perused many ancient *Saxon* Laws, that are now lost; as you may see in those that relate to King *Alfred's* Proceedings against his corrupt Judges, and other things. Then as to what you object against the Genuineness of this Law of *Edward the Confessor's*, it is certain, that it is found in these very Words, with very little Alteration, in all the Copies of *K. Edward's* Laws; only in *Hovenden*, instead of *Rex quia Vicarius summi Regis*, it is, *Rex atque Vicarius ejus*; which is no great Difference, and may relate to the King's Lieutenant, in his Absence beyond the Sea, for which there was often occasion for our Kings, when Dukes of *Normandy*, after their Accession to the Crown. And therefore tho' I grant some Clergymen (they having then all the Learning of the Nation among them) might draw up this Law into the Form it was made, and so render it as advantageous for the Church as they could; yet that this Clause was not the Addition of any ignorant Monk (as you suppose) will appear from this, That it is recorded by *Hovenden*, who lived and wrote about a hundred Years after it was thus confirmed: And we cannot suppose all the Copies of these Laws to be lost, and one single Copy to be left, and corrupted in so short a Time. And tho' it is true, this Law is not found among those set forth in the last Edition of *Ingulph*, yet does it not therefore follow, that there was no such Law ever made or confirmed by King *William*; since those Laws in *Ingulph* seem to be more like an Epitome of the criminal and feudal Laws, confirmed or added by that King, than an exact Body of all the Laws of the Confessor; those having been writ in *Latin*, and confirmed by King *William* in the Fourth Year of his Reign; whereas this Copy was published in *French*, for the Use of the King's *Norman* and *French* Subjects, and that long after King *William's* coming to the Crown; for *Ingulph*

tells us, ' That after *Domesday-Book* was made, he brought those Laws down ' from *London* in the *French Tongue*, (in which they were put forth, lest he, or ' any of his Monks, should thro' Ignorance, happen to offend his Royal Majesty, ' by an unwary Breach of them). ' But as for the Faults in the Chronology in the Story of *Charles* and *Pepin*, in all the best Copies of these Laws, this Letter is said to be written by them to the Pope, and not to King *William* at all ; and then it will be at most but a *Misnomer*, or Error of the Transcriber, putting in Pope *John* for *Zachary*. But if you will have my Opinion of this Matter, I do freely grant, that this Passage in the Law concerning these Princes writing to the Pope about the Deposition of King *Childerick*, might be an Addition of those Monks who first transcribed those Laws, and made short Glosses upon them ; and yet the Law it self might be genuine notwithstanding ; and if the Law it self be so, it must be understood in a larger Sense than what you would put upon it : For sure by defending of his Kingdom, must be meant, not only the bare defending it against Foreign Enemies, but also against the Wrongs and Oppressions of his own Ministers and Officers ; which if he suffer by a wilful Negligence, or on set Purposes, he will as much offend against this Law, as if he had done it himself, and so will lie under the same Penalty. Much less will these Passages concerning defending the Clergy, and reverencing the Church, render this Law either void, or impracticable : for suppose you take *Populus Dei*, in the strictest Sense, to signify the same with *Servus Dei*, (which I grant always to signify the Clergy in our ancient *Saxon* Laws and Charters) yet all this does not make this Law void and impracticable ; since sure, maintaining the Worship of God is one Part of the Duty of a Christian King ; nor can this be well perform'd without some Men set apart for that Purpose, and that these Men cannot attend their Sacred Function, without being maintained in their just Rights and Liberties ; neither is it any Consequence, that these Clergy must always consist of the very same Orders of Men, as when this Law was made. So that suppose the Monks were then held as a necessary Part of this Clergy, Will it follow, that it was not lawful for the State to alter or take them away ? For then no Religious Order that was then in being, could have been suppressed afterwards ; which no Papist will say. So that the Meaning of this Clause in the Oath is no more, than that the King should from time to time defend all such Clergymen, such as the Nation, (that is, the Legislative Power) should think useful and necessary for God's Service, without being tied to any certain Orders or Degrees of Men, provided those that are particularly ordain'd by Christ and his Apostles, for the Service of his Church, be inviolably maintained and preserved. So likewise for the Church it self, granting, (which may also be question'd) that at the Time when this Law was made or confirmed, Popery was come to its Height, and so was the establish'd Religion of the Nation ; and consequently that by the Church here mention'd, was then to be understood the *Romish* Church or Religion, (as we now call it) ; yet does it not follow, that the King by this Law is to forfeit his Crown, if he ever alter it ; for the Law only says in general, that he shall reverence the Church of God, that is, That Profession of Christianity, or Way, which he and the great Council of the Nation shall, upon the most mature Judgment and Deliberation, think to be so. So that all that can be deduced from this Clause, is, That the King shall reverence Holy Church, that is, maintain the Profession of Religion, which shall be established by Law, and shall make no Alteration therein, without the general Consent of the whole Nation in their great Councils or Synods, consisting as well of Ecclesiastical as Secular Members : And so likewise he shall defend it from all injurious Persons, that would invade the Rights of the Church and Clergy contrary to Law, and shall root out all Evil-doers, that is, all debauch'd and wicked Professors of Christianity ; for so *Maleficos* properly signifies, and not Hereticks, as you would render it, (who are not Evil-doers, but false Believers) ; or if it should be interpreted for Hereticks, it is not those that then might be looked upon as such, but what the present Church shall so determine ; or else we must own the former Church to have been infallible in all her Determinations. So that I can see no Reason upon the whole Matter, why this Law should now become void or unprofitable by reason of any Alterations in Religion, or of those Men that were then to exercise the Functions of it, as long as all the necessary and material Parts of both are preserv'd, as they are to this Day ; for otherwise this Law would have tied up the King and Nation from making any Reformation in Religion, tho' never so much for the better ; or tho' the National Church had never so much required

quired it, which I suppose no true Protestant will affirm. As for the Authority of that Ancient Law-Book, call'd *The Mirror of Justices*, I think I may very well insist upon it, notwithstanding any thing you have urg'd to the contrary.

But as for those Passages out of *Bracton* and *Fleta*, which I have brought to confirm and support our Sense of this Law, and which you labour to avoid, by putting too general and loose an Interpretation upon them; whereby you would make them only to signify, that the King is to maintain right Judgment and Justice between Man and Man, without which his Royal Dignity cannot hold or subsist: But that he is not obliged upon any Penalty to observe the same Things in respect of himself, or his own Officers or Ministers; this is all one, as if a Shepherd, who had a Flock of Sheep committed to his Charge by the Owner, having first fleeced, and then killed and destroyed them, and converted the Wool and Carcasses to his own private Use, should then tell the Owner, that he was indeed to defend the Flock from Thieves, Wolves and Foxes, but that it was no part of his Bargain to keep them safe untouch'd from himself, or his Servants, or so much as his own Dogs. But that the Sense of *Bracton* and *Fleta* is quite otherwise, sufficiently appears by these Places I have now cited; and if those will not do, pray consider these that I shall here add. For *Bracton* also, in the same Chapter, tells us, *Ad hoc creatus est [Rex] & electus, ut Justitiam faciat universis*. And he also there recites the ancient Coronation Oath in these Words: *Debet enim [Rex] in Coronatione sua nomine Jesu Christi hæc tria promittere Populo sibi subdito, Imprimis, se esse præcepturum, & pro viribus opem impensurum ut omni Populo Christiano vera pax omni suo tempore observetur. 2. Ut rapacitates & omnes iniquitates interdicit. 3. Ut in omnibus Judiciis æquitatem præcipiat, & misericordiam, ut indulgeat ei suam misericordiam clemens Deus*. Now, how can a King observe this Oath, that robs the People of their Goods, and raises Taxes contrary to Law? Or how can he continue a King, who violates all the Ends of his Institution? From all which it appears, that by this *Justice* and *Judgment* must be meant, not only the King's own observing Justice towards his People, but also his prohibiting his inferior Ministers and Officers from spoiling and oppressing them. And that no Prerogative can justify him in the doing otherwise, is as evident from another Place in *Bracton*, where he tells us, *That Regia potestas Juris est, non Injurie, & nihil aliud potest Rex nisi quod jure potest*. But *Fleta* is somewhat larger on this Head, tho' to the same Effect, when speaking of the King's Power or Prerogative, he says thus; *Et licet omnes potentia præcellat, cor tamen ipsius in manu Dei esse debet, & ne potentia sua maneat infrenata frenum imponat temperantie, & lora moderantie; ne trahatur ad injuriam, quia nihil aliud, hoc est in terra, nisi quod de Jure potest: nec obstat quod dicitur, quod Principi placet legis habet potestatem, quia sequitur cum lege Regia, quæ de ejus Imperio lata est, non quicquid de voluntate Regis tantopere præsumptum est, sed quod Magnatum suorum consilio Rege auctoritatem præstante, & habita super hoc deliberatione, & tractatu recte fuerit definitum*. Which not only shews, that our Ancient *English* Lawyers in this agreed with the Civil Law, and gave the same Account of the Original of the Royal Power as that Law does, viz. that it was conferred by the People of *Rome*, on the *Roman* Emperor, by the *Rex Regia*, mentioned in the old *Civilians* I have formerly cited; and also shews, that our Ancient Lawyers supposed that by a like Law among us, the Royal Authority was originally derived from the Consent of the People of *England*; without whose Advice and Assent, included in that of their Representatives, here called *Consilium Magnatum* (*Consilium* being taken for Consent in this place, as I have prov'd it often signify'd) no Law can ever be made. Now, if the King will not be ruled by this Bridle of Moderation, this Author, as well as *Bracton*, tells us, That the King then hath his Superiors, the Law and his Court of Barons, who were as Masters to put this Bridle upon him. But admit, he will run away with this Bridle between his Teeth; all this had signified nothing, if there be no other Remedy left us, besides bare Supplication or Remonstrances to the King of his Duty; and he might have dissolved the Parliament before ever it could have any Time to do either the one or the other.

To conclude; That the King was at first elected and created for this End, that he may do Justice to all Men; and that this Justice does not only concern his maintaining Justice between his Subjects one towards another, but also in respect of himself, his Children and Subordinate Officers and Ministers that act by his Commission, appears by what follows in *Bracton*, after the King's Coronation-Oath:

Potestas (scil. Regis) itaq; Juris est non injuria, & cum ipse sit Author Juris, non debet inde injuriarum nasci occasio, & etiam qui ex officio suo alios prohibere necesse habet, id ipsum in propria persona committere non debet. So that it is plain, that if he either command or permit these wilful Injuries generally all over his Kingdom, he fails to defend it according to King *Edward's* Laws; and if he thus fail to defend it, he thereupon loses or forfeits his very Title or Office of a King, since he cannot keep or hold his Crown, or Royal Dignity; for without Justice it cannot subsist, and this by the Original Contract. Since upon whatever Terms the first King of this Race took the Crown, upon the same Terms all his Posterity who succeed either by Election or Right of Blood, by virtue of that first Compact, are to hold it under the like Penalty of a Forfeiture, in Case of a wilful Neglect or Violation of their Duty.

M. I confess you have made a specious Proof of this Original Contract you so much talk of, and more than ever I thought could have been said for it: But let it be what it will, it is certain, in the first place, that whatever coercive Power the Two Houses of Parliament might pretend to when *Bracton* wrote, they have solemnly renounced it in Two successive Parliaments in the Reign of King *Charles* the 1st; therefore I shall not insist any longer upon Old Antiquated Laws, or Original Contracts, which are not directly expressed, but consequently deduced at best. But I must now tell you, that let the first Institution of this Government have been what it will in the *Saxon* Times, and what Original Contract soever you may please to fancy between them and their Subjects; yet this was all gone, and out of doors, by that absolute Conquest which King *William* the 1st made of this Kingdom for himself and his Heirs, who do not at all claim under the Title of the *Saxon* Kings. For since this Ancestor of our new Kings had no just Title to the Crown but by the Sword, and that he gain'd this Kingdom by the Conquest of King *Harold*, and the People of *England*, who had elected, and fought for him; as also by the subsequent Recognition of this Right by all the People of *England*, in their Oaths of Allegiance so often repeated to King *William* and his Successors, they have thereby acknowledged it to be as absolute a Monarchy by Conquest, as ever was instituted by any Prince in the World. And tho' I grant, that several of the Conquerors have been graciously pleased to grant divers Privileges to the People of this Nation, and some of them perhaps the same they enjoyed in the *Saxon* Time; yet can they not enjoy it by virtue of that Original Contract you suppose to have been made between the first King of that *Saxon* Race, and the People of *England*: I have said but now, King *William* had no Right by any Title from King *Edward* the Confessor, but wholly by his Sword, as I shall prove by and by.

H. I. p. 211.

But however, these Concessions ought not at all to derogate from the Absoluteness of the Power, or the *Indefeasibleness* of our King's Title: For since these Limitations of Absolute or Imperial Power did not proceed from any other Original, than the free and voluntary Concessions of our Kings, and not from any Compact with their People; they do not at all derogate from the uncontrollable and unaccountable Sovereignty thereof: So that we may very well distinguish between the Being and Essence of Imperial or Sovereign Power, and the Exercise or Emanation thereof. As to the Being and Essence of it, it is in as full Perfection in the Limited, as in the Arbitrary Sovereign, tho' the Law confines and limits him in the Exercise thereof; but to be confined in the Exercise doth not destroy the Being, nor diminish the Perfection of Sovereign Power: for then the Power of God himself could not be Sovereign, because there are certain immutable Rules of Truth and Justice, within which it is necessarily limited and confined; but God is nevertheless a perfect Imperial Sovereign over the Universe, tho' the Exercise of his Government over his Creatures be limited by the Eternal Laws of Truth and Equity. It is true, that this Limitation of Almighty God is intrinsic, and proceeds from the Perfection of his Righteous and Holy Nature; but yet it shews, that the most perfect and absolute Imperial Power may, without a Contradiction, be confined within Bounds, and limited in the actual Exercise thereof; and that such Limitation of Absolute Imperial Power (proceeding wholly from it self) doth only qualify and temper, but not destroy the Essence of it. And therefore *Coke*, in *Cawdry's* Case, saith, That by the Ancient Laws of this Realm, *England* is an Absolute Empire and Monarchy, and that the King is furnish'd with plenary and entire Power, Prerogative and Jurisdiction, and is Supreme Governor over all Persons within this Realm.

There-

Therefore whoever will consider the Original of this Limitation of Sovereign Power, to have proceeded wholly *ab intrinseco*, from the voluntary Grants of our first Monarchs after the Conquest; and will also distinguish the Essence from the Exercise of Sovereign Power, will find there is no Contradiction between the Fullness of Sovereign Power in the Root, or Essence of it, and a Legal Limitation of the Use and Exercise thereof; and from hence it comes to pass, that the King of *England*, tho' he be thus limited in the Use and Exercise of his Power, yet he is still as much the Fountain of all Power and Jurisdiction within his Dominions, as if he were Arbitrary; he hath none to share with him in the Sovereignty, but all Power and Authority is derived from him, like Light from the Sun: In him alone it is radically and originally placed; he hath no Sharers or Copartners with him in the Sovereignty, none co-ordinate with him in the Government, none Equal, no Superior, but only God to whom alone he is subject. Hence saith *Bracton*, *Omnia quidem sub eo, & ipse sub nullo, sed tantum sub Deo, non est inferior sibi subjectis, non Parem habet in regno suo*; and afterwards, *Ipse autem Rex non debet esse sub homine sed sub Deo*. *Ibid.*
Lib. 1. c. 8.

Therefore tho' I grant the King is obliged by his Coronation Oath, to keep to these Limitations, which both he and his Predecessors have sworn to; yet if he any ways fail in the Performance of it, this Failure cannot give his People any Manner of Right to take up Arms against him, and to resist him in any such Case, much less can it cause a Forfeiture of his Royal Power; since being at first the sole Sovereign Power, he did not by putting this Limitation thereunto, intend to part with any Share of it to the great Council of the Kingdom, or Parliament, but only to take them into a Part of the Care and Trouble of the Government, and to limit his Prerogative from passing any Laws or raising any Money without their Assent, unless in Cases of great Necessity; and then, if he is still Judge of this Necessity, as certainly he is in the Intervals of Parliament, it can never be supposed, that the first Prince, or his Successors, that parted with these Privileges to the People, ever intended to be so straitly tied to them, as that in no Case whatever, tho' never so pressing, they should not depart from them, much less that he should forfeit his Crown if he should wholly break them, nay should persist so to do, and resolve to turn this Limited into an Absolute Despotick Monarchy; since the Observation of these Laws being but Concessions of his own, or his Predecessors, can never be looked upon as Conditions of his holding the Crown, nor of the Subjects Allegiance to it; there being, as you your self confess, no such Clause express'd in either Part, neither in the King's Coronation Oath, nor yet in theirs of Allegiance to him, as you your self cannot but acknowledge; and tho' it is true, the King swears at his Coronation to keep and maintain the Laws, yet *Grotius* tells us, *Lib. 1. cap. 3. That an Empire or Kingdom does not cease to be absolute, altho' he who is to rule promise some Things to God, or to his Subjects, even such which may appertain to the Manner of the Empire; and that not only concerning the Observation of the Natural or Divine Law, but of certain Rules to which without a Promise he were not obliged*. So that in all Promises of this kind, the Manner of the Obligation is not reciprocal, or of the same Sort on both Sides. As for Example, it is only moral in respect of the King, and it is left wholly to God to judge between the King and his Subjects, and to punish him when he breaks his Part: But to the King as God's Lieutenant on Earth, it belongs not only to judge of his Subjects Breach of their Oath and Contract, but also to punish them for so doing, and compel them to the Performance of it. And of this Judgment are all the modern Civilians. As for *Bodin* I have given you his Opinion in the Chapter I last cited, concerning this Matter, and he as well as *Grotius* is clearly of Opinion, that absolute Monarchs, such as he reckons the King of *England* to be, are not to be called in Question or destroyed, let their Breach of Laws and Tyranny be never so notorious, much less can they forfeit their Royal Dignity for such Male-administration. And tho' *Grotius* is of Opinion, that in Cases of great and evident Dangers of Life, Subjects may have a Right of Resistance against absolute Princes, and those commissioned by them; What is this to the Case in Hand? viz. a Resistance against an absolute Monarch for Violation of those Privileges and Liberties that were granted by himself or his Ancestors, and without which Subjects may very well live and subsist; as we see they do, under

L. VII. Cap. 2.
§ 6.

the most absolute despotick Monarchies, where they enjoy no such Thing; tho' perhaps they do not live so well and freely as we do. Nay, *Puffendorf*, the Author you so much make use of, in his Seventh Book, will not allow "Subjects to take up Arms, or resist absolute Princes, for too great Cruelty in Punishment, nor for imposing too immoderate Taxes; since the Presumption of Justice, and Necessity for the doing of these Things is always on the Prince's Side; nay, if his Promises are not kept, or Privileges formerly granted are taken away, if the Prince be absolute, and will pretend any Fault, Necessity, or remarkable Benefit thereby to the Commonwealth, he shall be deemed to have acted by a Right, of which the Faculty of judging is wholly wanting to the Subjects; since all Privileges have this Exception, unless the Welfare, or Necessity of the Commonwealth forbid them to be observed.

Per Inspect. 1.
E. IV. Part. 7.
m. 26. Vid. Selden's Review,
p. 483.

Charta. 4. E. 4.
m. 27. per Inspect.
Vid. Seldeni ad
Eadmer. notæ,
Cæ. Fol. 211.

Flor. Wig. Will.
Gean. ad Ant.
Ann. Will.
Maline

F. Since your last Discourse consists of Two Parts; Matter of Fact, and Matter of Right deducible from that Fact, I shall speak to each of them in Order. First as to the Matter of Fact, it is a great Mistake in you, and Dr. *Brady*, to maintain that King *William I.* was really a Conqueror, and by his Sword (without any other Title) obtained such an entire Victory over *K. Harold* and the whole *English* Nation, as gave him an Hereditary Right for himself and his Heirs, to the absolute Allegiance of the whole *English* Nation, without any Reserve or Condition whatever: So that all our ancient Liberties and Privileges being thereby lost and forfeited, this Nation can claim nothing of that kind, but from the Grants and Concessions of that King or his Successors; every one of which Propositions contain many notorious Mistakes in Matter of Fact: For in the first place, *K. William* never claimed the Crown by Conquest, but by the Adoption and Testament of *K. Edw.* the Confessor; and I defy you to shew me any ancient Law or Charter, either of his own, or any of his immediate Descendants, wherein he is stiled Conqueror: 'Tis true, in his Charter to the Abbey of *Westminster*, he says, that by the Edge of the Sword he obtain'd the Kingdom by the Conquest of *Harold* and his Accomplices, yet does not found his Right on that Victory alone, but on the Donation of King *Edward* his Cousin; the Words are remarkable, *in ore gladii adeptus sum Regnum Anglorum, devicto Haroldo Rege, cum suis Complicibus; qui mihi Regnum divinâ providentiâ destinatum & beneficio concessionis Domini & cognati mei gloriosi Regis Edwardi concessum conati sunt auferre.* And this Donation he calls an Hereditary Right in divers other Charters, as particularly in one also recorded by *Inspeimus*, beginning thus, *In nomine Patris & Filii & Spiriti sancti, Amen. Ego Willielmus, Rex Anglorum hereditario Jure factus.* So likewise his Son King *Henry I.* in his Charter to the Abbot of *Ely*, creating him a Bishop, calls himself the Son of *William* the Great, (not the Conqueror,) *Qui Edwardo Regi hereditario jure successit in Regnum.*

And in vertue of this Donation, he was after his Victory against *Harold*, by publick and full Consent of the whole Nation, or People of *England*, as also of the *Normans* he brought with him, *Elected* or Crowned King, and at his Coronation took the same Oath at the High-Altar at *Westminster*, which his Predecessors the *Saxon* Kings had taken before him; with this one Clause farther, which was very necessary to be done at that time, *viz. quod æquo Jure Anglos & Francos tractaret*: So that let his Title by Conquest have been what it would, it was either by a just Right of War, to recover his Due, or by none at all; if the former, he could only succeed to such Rights as King *Edward* the Confessor before exercised and enjoyed; since he came hither only to take the Crown that was to bequeathed to him, and to hold it under that Title: But if he had no Title at all, but his Sword, he then could obtain no just Right to the Crown of *England*, either for himself or his Successors. So that if they will only insist upon their Title by the Sword without any preceeding or subsequent Right, they may be as lawfully turned out again by the Sword; since it is own'd by all Writers on this Subject, that a Conqueror in an unjust War can obtain no Right over a free People.

So much for the Matter of Fact: I come in the next Place to the Point of Right by the Laws of Nations. I grant indeed that a simple Oath, or Pact between an absolute Monarch and his Subjects, to do or perform such or such a Thing; or to let them enjoy such and such Privileges, does not immediately give the People a Power to compel such a Monarch, and his Successors, by Force of Arms, to the strict Observance of them, in Case of a Violation on his Part. But our Case is very different from this; for here a Foreign Prince recovers a former Right to the Kingdom, and that by Force; and is invested with the Crown, in virtue of that Right by which he claimed it, and is also sworn to maintain the ancient Govern-

Government and Laws ; according to which the whole Legislative Power was not in the King alone, but jointly in the King, and the great Council of the Nation, without whose Grant, or Consent, he ought not to have laid any Taxes upon, or otherwise oppressed the whole Nation, as I shall prove if there be occasion. Now all our Ancient Rights being granted, and acknowledged by him, and a constant Common Council of the Kingdom appointed to meet, to see them observed, as it did many Times in this King's Reign, as also in those of his Successors, they were not bare Privileges conferred of Favour, and which might be observed or broken at the Will of the Prince that granted them ; but a Form or Rule of Government by Laws, confirmed and agreed upon in a standing Council, appointed not only to make them but also to see them observed : As appears by that Passage so often cited, wherein the King is expressly said to have a Superior, *viz.* the Law, and the Court of Barons, who were to put a Bridle upon the King, in case of his governing without Law. And this farther appears, by the great Charters of *Henry I. K. Stephen,* and *K. John,* &c. in the first of which it is declared, that the Nation having been oppressed by unjust (*i. e.* illegal) Exactions, he therefore forbids all *Common-Money*, or Taxes, not taken through all Cities or Counties, in the time of *K. Edward* ; and also confirms the Laws of his Father, whereby his Barons, and Tenants in *Capite*, should be free from all Tailage or Taxes ; and he also thereby restored to them the Laws of *K. Edward*, with those Emendations which his Father had made by the Common Council of his Barons. Now the great Charter of *K. John* was but an Addition, or rather Explanation of this Charter of *K. Henry I.* which was at first demanded by the Barons to be again confirmed by this King, at the Instigation of *Stephen Langton* Archbishop of *Canterbury*, as *Mat. Paris* shews us at large. P. 240, 241,

Now since neither *K. William* the I. nor his Successors, ever changed the Fundamental Constitution of the Government, as to the Legislative Part of it, (as hath been already proved) and that those Breaches that had been made upon it, by taking Tailage or Taxes, without the Consent of the great Council, are all hereby expressly forbid ; these are certainly more than such meer Privileges, which the King himself is the only Keeper of, and can dispense with at his Pleasure ; but are indeed such Fundamentals as concern the very constituent Form or Rule of Government ; which, as I have also proved, was mix'd not limited, in the very first Institution. And though the learned *Puffendorf* agrees with you in the Case of Compacts between an absolute Monarch and his Subjects ; yet as to the Point in hand he is wholly of my Mind, as you may see in his Academick Dissertations, in his Discourse *de Imperiis* ; where arguing against Mr. *Hobbs*, who will not P. 272. allow of any Compacts between an Absolute Prince and his Subjects, he has this Passage, which I shall here read to you in *English*. “ That though in Pacts, in “ which a Submission on either Part is wanting, certain and defined Performances “ may be set forth, to be observed on either Side, from an intrinsic Impulse of “ Conscience ; when either of these refuse to perform them, nothing but War or “ the Compulsion of a Superior Lord, common to both of them, remains ; yet “ in Pacts, by which one Party is made subject to the other, it belongs to the “ latter to define what ought to be performed by him, as also a Power over the “ other, compelling him to the Performance whether he will or no ; which Power “ does not belong reciprocally to the other Party against the former. Hence the “ Party commanding cannot be questioned for a Breach of Compact, unless he either wilfully abdicate all Care of the Commonwealth, or put on an hostile Mind “ towards his Subjects ; or manifestly, or deceitfully, (in *Latin, dolo malo*) depart “ from the Rule of governing ; on whose Observance, as upon a subsequent Condition, the Subjects Allegiance depends, which is easily to be avoided by any “ Ruler ; if he will consider, that not the highest of Mortals are free from the “ Laws of Human Chance. So that let the Power of your Conqueror have been never so great, or absolute ; it is plain, he not only renounced it himself, but several of his Successors have done the same for themselves, and their Heirs ; therefore make the most of it, they must still claim by virtue of the first Contract, to maintain the Constitution as they found it ; or else resolve all their Right into meer Force ; and then *vim vi pellere licitum est*.

M. It is no wonder that you and I differ in our Conclusions, since we also differ so much in the Premises ; and in the very Matter of Fact, concerning King *William* the Conqueror's coming to the Crown ; you saying, he came to it partly by

Vi. Hovenden
pars prima, p.
449. Will.
Malin. Lib. 2.

the Sword, but founded on a Donation of *Edward* the Confessor; and partly by the Consent and Election of the People of *England*; yet you your self cannot deny, but Force or Conquest had a great Share in the Business, and indeed was all he had; for as for that Donation of *K. Edward* it is either forged, or else *K. William* could claim nothing by it, since *England* was then either an Hereditary Kingdom or Elective; and take it which way you will, this Donation of the Confessor's could signify nothing, either to the Prejudice of the People that were to Elect, or the next Heirs who were to succeed after *K. Edward's* Decease; neither could he claim as Heir to him by Blood; for the Relation between him and *K. Edward* was by his Mother *Emma*, Sister to *Richard* the Second Duke of *Normandy*, this *William's* Uncle; so that the Conqueror was no way descended from the Blood Royal of *England*: Therefore his true Quarrel with *Harold*, (let his Pretence be what it will) was not, because he kept a Kingdom bequeathed to him by *K. Edward*; since some Writers relate this King named not him but *Harold* for his Successor; tho' others say, that he recommended *Edgar* to the good Will of the *English* Nobility. So that the only true and just Cause Duke *William* had of making War upon *Harold*, was his breaking the Promises and Oath he had not long before made him of securing the Kingdom of *England* for him upon the Death of *K. Edward*; instead of doing which he had seized it for himself; and which is worse refused to restore it, or so much as hold it of Duke *William* as his Homager. So that though for the Strengthening of his own Title, he pretended to the Will or Donation of King *Edward*; and to avoid the Envy of the Name, might out of Modesty, or to put a better Colour upon this Matter, refuse to take the Title of Conqueror, and to insist upon the Donation of King *Edward*; yet nothing is plainer, than that he could claim by no other Title but the Sword. And that he looked upon himself as no other than an absolute Conqueror, may appear by these great and evident Instances: 1. His Change of the *English* Laws, and introducing the *Norman* Customs in their Stead; and also changing the Tenures of Lands, not only of the Laity but also of the Bishops and greater Abbeyes. 2. By his debarring all those of the *English* Nation, from enjoying any Honour, Office, or Preferment, either in Church or State; and also in taking away the Estates of all the Nobility and Gentry, not only of those Heirs that had been slain in the Battel of *Hastings*, but also of the rest; so that they had left them but what they could purchase of those *Norman* or *French* Noblemen, to whom King *William* had given their Lands, as a Reward of their good Service. For the Proof of both which Assertions, I have so very good Authority on my Side, and that of Writers of or near those Times in which these Things were done, that I think no indifferent Man can have any Cause to doubt the Matter of Fact to have been as I relate it; nor did he by any After-Act ever renounce this Right of Conquest as you suppose, much less refer it to the Election of the *English* or *Normans*; since the former were not in a Condition to make any farther Resistance against him, the Clergy and great Men of the Kingdom having been forced to submit themselves to him without any other precedent Conditions or Stipulations, than for the saving of their Lives. And as for the *Normans*, they were his Subjects, and they conquered the Kingdom only for his Use and Benefit, as his Soldiers and Vassals; and it is not likely he would owe the Kingdom which he had thus acquired by the Sword, to their Votes or Election; neither does any Author that I know of mention any Election before his Coronation; when tho' it is true, he took such an Oath as you mention, yet it was in too general Terms to bind him to any Observation of the Ancient *English* Laws, much less to preserve their Rights and Privileges, farther than he thought fit, and therefore could never take the Crown upon your Conditions of Resistance or Forfeiture, in case of any Alteration in that which you call the Fundamental Constitution.

This being the true Matter of Fact without any Disguise, it is easy to answer all that you have said against *K. William's* acquiring an Absolute, Hereditary Right to the Crown of *England* for himself, and all his Descendants by the Sword. First then, As to the Justice of the War, and Conquest it self, I suppose you will not deny, but that Duke *William* had a good Cause of War against *Harold* for the Breach of his Oath; and if so, against all that took his Part at the Battel of *Hastings*; so that upon the Conquest of *Harold*, and those that were in that Fight, he also acquired a Right by Conquest to all that they enjoyed; and consequently had a Right to *Harold's* Crown, as well as his other Estate; as also to the Estates of all those

those that were either slain, or escaped alive from that Battel; and not only to these, but also to all the Lands of the whole Kingdom; since the War was made not only against *Harold's* Person, but against the Kingdom of *England*; the People of which, according to their Allegiance, assisted him in that War, either with Men or Money. But admitting the War to have been in it self never so unjust, yet all Writers on this Subject (even *Grotius* and *Puffendorf*) grant, that Conquest even in an unjust War, with a thorough Settlement in the Conqueror and his Successors, by the Non-claim, Dereliction, Submission, or Extinction of the next Heirs of the former Kings, together with a long uninterrupted Possession beyond all Time of Memory, will confer a good Title; especially when all these were confirmed by a constant Submission and Recognition of the People, testified not only at the first Conquest, but in all succeeding Times, by as absolute and unconditioned Oaths of Allegiance as can be invented, or that were ever taken to the most Absolute Monarch: And such Oaths are always to be interpreted in Favour of the Prince to whom they are sworn, and as strictly against the People that take them; as all Writers also agree. Now, granting this to be the Case of King *William* the Conqueror, that by all or some of these Means he acquired a Right to the Crown, not only for himself, but his Heirs; this Power was Absolute, without any Conditions to be observed on their part: For the Oath of Allegiance is positive, without any Condition or Restriction. So that I can see no manner of Pretence that the People of this Nation can have, of forcing their Kings to the Maintenance or Observation of those Rights and Privileges, which they, their Predecessors, or Ancestors have so freely granted to them; as *Puffendorf*, whom you now cited, very rightly observes; and consequently can have no Right to repel Force by Force; since our Kings do not now hold their Crown by Force or mere Conquest, but by all other Things required by the Law of Nations to create a full and absolute Right, viz. a long uninterrupted Possession, and the Absolute Submission of the People for themselves, and all their Descendants. So that tho' I grant bare Conquest, considered as a Force, can give no Right alone, yet it may often be the Mother of Right, and may at last grow to a sufficient Right, by the Means I have already mentioned.

Vid. *Grot. l. 2*
c. 4.
Puff. l. 7. c. 6.
§. 15.
" 7. §. 3, 4.

F. Before I reply any thing farther to what you have now said to the Matter of Right acquired by your Conqueror and his Heirs, pray, in the first place, prove the Matter of Fact to have been as you lay it; and therefore produce your Quotations from the Authors you mention. But first give me leave to tell you, that Dr. B. and you are the first I have heard to make so light of this Testamentary Donation of *Edward* the Confessor, which the greatest part of the Writers nearest that Time, do suppose to have been really made on the behalf of Duke *William*; and that notwithstanding this Bequest, *Harold* unjustly, and contrary to his own Oath, did by Force set the Crown upon his own Head, without any precedent Election of the Clergy, Nobility and People, as was required at that time, since it was impossible for them to meet in so short a time. For King *Edward* dying on the Eve of *Epiphany*, was buried on *Twelfth-day*; and on the same Day *Harold* took upon himself the Crown, by the Consent of some of the Bishops and Nobility of his Faction then at *London*: So that he was certainly no better than an Usurper. And therefore by the Conquest of *Harold* and his Party, your Conqueror could acquire no Right over all the Free People of *England*, since they never gave their Consents to place *Harold* on the Throne; and consequently King *William* could have no just Cause of making a Conquest upon the whole Nation, since neither did he ever in all his Reign (as I can find) call a Common Council of the Kingdom to recognize, or confirm his Title. And tho' it is true, *Harold* proving a Valiant and popular Prince, got the good Will of the common People by divers Acts of Grace, (which he had lost by his violent taking the Crown from *Edgar Atheling*, the only remaining Male Heir of the *Saxon* Race) and found very many who were willing to fight for him, not only against the King of *Norway*, who had a little before invaded the Kingdom, but also against Duke *William*; yet all those in his Army could amount to nothing near the whole Nation, who never contributed to the War by any publick Vote or Tax; and therefore did not countenance it by giving Money, or raising of Men, as you suppose: So that Duke *William* could not pretend a Right of making War against any body, but only *Harold* and his Accomplices. But as for the Testamentary Donation of *Edward* the Confessor, tho' you make so light of it, yet *Inglulph* says expressly, that *Edward* the

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Confessor, some Time before his Death, sent *Robert* Archbishop of *Canterbury*, as his Ambassador to Duke *William*, to let him know, " That he had designed him. " his Successor, not only by Right of Kindred, but by the Merit of his Virtue: And that after this, *Harold* coming into *Normandy*, promised upon Oath to assist him in it. And *Will. Malmesbury* says also, That *Edward*, the Father of *Edgar Atheling*, dying almost as soon as he came into *England*, King *Edward* his Cousin being dead, gave the Succession of this Kingdom to *William* Duke of *Normandy*. With whom also agrees *William* of *Poitou*, and most of the rest of the Historians of that Age, as well *English* as *Normans*: Nor do I know any of them, except *Simcon* of *Durham*, and *Roger Hoveden*, who make *Harold* to have been appointed Successor by King *Edward*.

But I confess your main Objection is still to be answered, viz. What precedent Right Duke *William* could have to the Crown of *England* by this Testament of King *Edward*, since it was then either an Elective, or else an Hereditary Kingdom, and so this Donation could confer no Right on this Duke, in Prejudice of the People's Right to elect, or else of the next Heir to succeed? In Answer to which, I must tell you that which perhaps you may have never considered, That the Crown was then neither properly Elective nor Successive, but a Mixture of both.

M. That seems a Kind of a Paradox, and what I never heard before: Pray explain your self, for I do not understand how it could be.

F. Why then, I will tell you: The Crown of *England*, in those Times, was very like what the Crowns of *Denmark* and *Sweden* were not long since, and as the Empire is at this Day; in which tho' the Estates or Diet might chuse whom they pleased for King or Emperor, yet they still kept to the same Family or Line, as long as there were any Maies left of it fit to succeed. Which Custom often gave the King in Being a Power, (which by degrees came to be looked upon as a Kind of Right) either upon his Death-bed, or else at any Time before, to nominate or recommend one of his Sons, or near Kinsmen, to be his Successor, by his last Will or Testament; especially if he had no Sons of his own, as happen'd in the Case of King *Edward* the Confessor. Now this Nomination, tho' it did not alone confer a Right to the Crown, yet it made the Person so named the fairest Candidate for it; and was such a Recommendation to the Estates, or great Council of the Kingdom, as they never passed by or denied, as I can ever find by the best Enquiry I have made. And for Proof of this, I shall appeal to the Testament of King *Alfred*, as you will find it Printed from an Ancient Manuscript, in the Second Appendix to his Life, in *Latin*, publish'd at *Oxford*. Which begins thus: "*Ego Alfredus divino munere, labore, ac studio Athelredi Archiepiscopi, nec non totius Westsaxonie Nobilitatis consensu, pariter. Et Assensu, occident alium Saxonum Rex; quos in Testimonium mee ultime voluntatis complementi, ut sint Advocati in disponendis pro salute anime mee regali electione, confirmo, tam de hereditate, quam Deus ac Principes, cum senioribus Populi misericorditer ac benigne dederant; quam de hereditate quam Pater meus Athelwulfus Rex nobis tribus fratribus delegavit, viz. Athelbald, Athelredo, & mihi; ita, quod qui nostrum diutius foret superstes, ille totius Regni dominio congauderet, &c.*" From whence you may collect, first, That tho' this King, in the very Beginning of his Testament, ascribes his obtaining the Crown, not to any Hereditary Right, but the Consent and Assent of the Nobility of *West-Saxony*; yet he also here mentions the Entail of the Crown by his Father's Will, upon his Two Elder Brothers, and himself successively, before any of his Elder Brother's Sons, who were living at the Time of the making of this Testament of King *Alfred's*, as appears by the Will it self, in which they are expressly mentioned. Now how could this be, that he was King, as well by the Consent or Election of the *West-Saxon* Nobility, as by his Father's Will, unless both these had been required to make him so? And *Will. of Malmesbury* tells us of King *Athelstan*, the Grandson of King *Alfred*, that *Jussu Patris in Testamento, Athelstanus in Regem est acclamatus*: But in the Beginning of this Chapter he also tells us, that *Athelstanus electus apud Regiam aulam que vocatur Kingston Coronatus est, quamvis quidam Alfredus cum sanctis suis obviare tentasset*; upon that Pretence that *Athelstan* was a Bastard. So that you may see, that his Father's Testament was not sufficient without the Election of the *Wittema Gemot*; who preferred him, tho' perhaps Illegitimate, before this *Alfred*, tho' Son to King *Alfred's* Elder Brother, who was set up against him.

And I doubt not, if more of the Testaments of the *English Saxon* Kings were now extant, that I could give you more Instances of this Nature. But that the Person so nominated and elected, tho' not the nearest always of Blood, claimed *Jure Hereditario*, is also as certain, since *Bracton* expressly tells us, "That *Hereditamentum*, or Inheritance, is not derived *ab Herede*, but Heir from Inheritance; and that Inheritance is the Succession to all the Right which the Predecessor had, by whatever Means acquir'd. With whom also the Civil Law agrees, *Heredis significatione omnes significare successores credendum est, etsi verbis non sint expressi*. Nor did this Custom, of thus recommending a Successor, prevail in *England* alone in those Times, but also was in Use among the *French* Kings of the Race of *Charlemain*; wherein the last Will or Adoption of the King, being confirmed by the Election or Recognition of the Estates of *France*, gave a sufficient Title to a Prince of the Blood Royal, tho' not Legitimate, nor the next Heir by Blood, to succeed: But the Will of the Prince was not alone sufficient, as *Monfieur Mezeray* has very well observed in his Chronological Abridgment of the History of *France*, in the Reign of King *Clotair* the Second.

So that to conclude; If Duke *William* of *Normandy* was thus adopted, named by King *Edward* the Confessor for his Successor by his last Will and Testament; and this had been without any Blows confirmed by the Council of the Kingdom, by a subsequent Election and Coronation and that he had received the Oaths and Recognitions of the *English* Subjects, which always followed that Solemnity; I doubt not but he would have had as good a Title to the Crown, as any of the Kings of the *English Saxon* Line: I am sure a much better than *Harold*, who I am not satisfied came in either by the Adoption of King *Edward*, or by the Election of the People; and therefore Duke *William* had a good Title against him, as an Usurper: And conquering him and those of his Party in the Battel, and being thereupon Elected, and Recognized, and Crowned by the general Consent both of the *English* and *Normans*; I cannot see why his obtaining the Crown against *Harold* by Force of Arms, should extinguish his former Right, and create a new Title by Conquest, which he never claimed by; or suppose his renouncing the Confessor's Will, which gave him a Right to be Elected King, according to the Custom of those Times; and to demand the Crown from an Usurper, who had solemnly sworn to assist him in his Right. But since you so positively affirm, that no Author whatever mentions Duke *William's* Election; I doubt not but to shew it you from more than one Author, and those of or near those very Times.

I shall, in the first place, give the Account that a short History, printed at the End of Mr. *Taylor's* History of *Gavel-kind*, from an Ancient Manuscript in the Bodleian Library, gives us of this Affair, and who seems to be an Author that lived very near those Times. *Londoniam Convenientibus Francis, & Anglis (ad nativitatem Domini) illisq; omnibus concedentibus, coronam totius Angliæ, & Dominatorem suscepit*. And *William* of *Poitou*, this King's Chaplain, in his History, relates it thus: *Die ordinationi decreto locutus ad Anglos concedenti sermone Eboraci Archiepiscopus sapiens, bonus, eloquens, an consentirent eum sibi Dominum Coronari inquisivit; protestati sunt hilarem consensum universi minime hesitantes, ac si cælitus unâ mente datâ, unâq; voce; Anglorum quam facillime Normanni consonuerunt sermocinato apud eos, ac sententiam præcunctatoriam Constantini Præsule, sic Electum consecravit Archiepiscopus, imposuit ei diadema, &c.*

So likewise *Ordoricus Vitalis*, a Norman Author, who flourished not long after in his Son's Reign, relates it thus: *Die natalis Domini Angli Londoniæ ad ordinandum Regem convenerunt, & Gulielmum Ducem Normannorum in Regem Anglorum consecravit Archiepiscopus, &c.* And goes on to relate the Manner how, just as the nameless *English* Author had done before; but then agrees with *William* of *Poitou* in all the rest. *Dum Aldredus Præsul Alloqueretur Anglos, & Godofredus Constantinensis Normannos, an concederent Gulielmum Regnare super se, & Universi consensum hilarem protestarentur unâ voce non unius Linguae locutione*. With whom also agrees *Will. Gemicensis*, in the History of the Dukes of *Normandy*, who was also an Author that lived in, or very near the Times of this King. His Words are *Anno incarnat. Domini ab omnibus tam Normannorum, quam Anglorum proceribus Rex est electus, & sacro oleo ab Episcopis Regni delibutus, atq; regali diademate Coronatus*. L. 3. p. 503.

So that you see here are no less than Four Ancient Authors, of or very near that Time, who all agree upon the solemn Election of King *William*; and yet your

Dr. has the Confidence to tell us, that Mr. *Petyt* only endeavours to prove this Election of King *William* out of some Fragments of Authors, who lived at some Distance of Time from his coming over hither.

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p. 200.

M. I confess you have shew'd me more for this mix'd Right of King *William's* by Testament and Succession, than ever I knew before. But you had dealt more fairly, if you had also added what Dr. B. takes notice of out of *Gulielmus Pictaviensis*, concerning King *William's* being advanced to the Crown: For immediately after the Mention of his being Crowned, he concludes thus: *Cujus Liberi & nepotes juxta Successione præsidebunt Angliæ terræ, quam hæreditaria delegatione Sacramentis Anglorum firmata, & Jure Belli ipse possedit.* So that here you see he grounds a Title to him and his Posterity, not only on his Hereditary Right, but the Oaths of the *English*, and the Right of War. But as for the Word *Electus*, made use of by those Ancient Authors, Dr. B. hath made it very plain in his History of the Succession of the Crown of *England*, as also in his Glossary, that this Word does not there signify Elected, but Recognized and Acknowledged, that such a one is or ought to be King. And I very much doubt, whether this could be properly termed an Election or not, since the same Historians also tell us, that Part of King *William's* Army kept Guard without the Church-Door, during his Coronation, by this good Token, that when they heard so great a Shout given upon the People's declaring their Assents, the Soldiers suspecting some Treason, set Fire to the Houses: So that I cannot see how that could be properly an Election, when the People durst not refuse. And I know that even at this Day, the King is shewn to the People on all the Four Sides of the Scaffold on which he is Crowned, and their Consent is formally asked, Whether they will have this Man to be their King? Yet no Man will say that their Acclamations and crying, Yea, yea, will make our Kings Elective, any more than it could do it in the Case of King *William*, who had a Title by Conquest precedent to this pretended Election; tho' I grant this Custom may have been in use ever since this Coronation of the Conqueror.

But that King *William* claimed indeed by Conquest, and by no other Title, let us not mind his specious colourable Pretences, but his Actions, which are the best Interpreters of the Thoughts of Princes; and we shall find, that through all his Reign he governed this Kingdom as a Conqueror: And this I shall prove, by making good the Three Instances I have already given, of his great Alterations of the Property, Laws, and Civil Liberties of the People of this Nation. To begin with the first of these.

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p. 33.

For the Proof of which, I shall make use of the Authority of *Gervace* of *Tilbury*, a considerable Officer in the Exchequer, in the Time of *Henry* the II^d. and who received his Information from *Henry* of *Blois*, Bishop of *Winchester*, and Grandchild to the Conqueror, who is most full to that purpose; which he thus delivers in the Manuscript Treatise, called the *Black-Book* of the *Exchequer*, which I shall read to you according to the Learned Dr. B.'s Translation of it.

' After the Conquest of the Kingdom, and the just Subversion of the Rebels,
' when the King himself, and his great Men, had viewed and surveyed their new
' Acquests, there was a strict Enquiry made, who they were which had fought
' against the King, and secured themselves by Flight. From these and the Heirs
' of such as were slain in the Field, all Hopes of possessing either Lands or Rents
' were cut off; for they counted it a great Favour to have their Lives given them:
' But such as were called and solicited to fight against King *William*, and did not;
' if by an humble Submission they could gain the Favour of their Lords and
' Masters, they then had the Liberty of possessing somewhat in their own Persons,
' but without any Right of leaving it to their Posterity, their Children enjoying
' it only at the Will of their Lord; to whom when they became unacceptable,
' they were every way outed of their Estates, neither would any restore what they
' had taken away.

' And when the miserable Natives represented their Grievances publicly to the
' King, informing him how they were spoiled of their Fortunes, and that without
' Redress they must be forced to pass into other Countries; at length, upon
' Consultation, it was ordered, that what they could obtain of their Lords by way
' of Desert or lawful Bargain, they should hold by unquestionable Right; but should
' not claim any thing from the Time the Nation was Conquered, under the Title
' of Succession or Descent. Upon what great Consideration this was done, is manifest
' (says *Gervace*;) for they being obliged to Compliance and Obedience, to purchase
' their

' their Lords Favour ; therefore whoever of the conquered Nation possessed Lands, &c. obtained them not as if they were their Right by Succession or Inheritance, but as a Reward of their Service, or by some intervening Agreement.

This alone were sufficient, coming from an Author of such Credit, and living so very near the Time ; but besides this, I shall give you the Authority of divers other Authors to the same Purpose ; and particularly *Ordericus Vitalis* (whom you but now cited) tells us how *William I.* circumvented the two great Earls of *Mercia* ; and that after *Edwin* was slain, and *Murcar* imprisoned, then King *William* began to shew himself, and gave his Assistants the best and most considerable Counties in *England*, and made rich Colonels and Captains of very mean *Normans* : And that he thus disposed of whole Counties to divers great Men, appears by *Domesday Book* ; wherein it is seen, that as the whole County of *Chester* was given by the Conqueror to *Lupus*, a *Norman*, so likewise the greatest Part of *Shropshire* was given to *Montgomery*.

And further, he took away from the *English* their Estates, and gave them to his *Normans* ; and this he did from his first coming in : For *Fitz Osborn* was made Earl of *Arundel* and *Hereford*, at his first coming in, and was Lord of *Betivill* in *Normandy*, and established the Laws of that Town at *Hereford*. *Alan* Earl of *Britain*, had all Earl *Edwin's* Lands given to him at the Siege of *York*, about three Years after his Arrival. To these I may add the 795 Mannors *Robert* Earl of *Morcton* in *Normandy* and *Cornwal* in *England*, had given to him by King *William* ; so likewise *Alan* Earl of *Britain* and *Richmond* had 442 Mannors, and *Jeffery* Bishop of *Constance*, had 280 Mannors given him by the Conqueror ; besides many other Lands of the *Saxon* Earls, *Thanes*, &c. were all given to the *Normans*, who took their Title from King *William's* conquering Sword.

So that I think it is very evident, that this King had distributed most of the Lands of the Nation to his *Normans*, long before the famous Survey of *Domesday Book* was begun ; and by that infallible Record, it is clear, that he gave near all the Lands of the Nation to his Followers, and very little or none to the *English*, who held what they had by a new Title, and new Services from the Conqueror, or his great Lords ; or became Tenants to, or Drudges upon their own Lands ; as we also learn from *Bracton* and *Flota*. Here is enough to satisfy any unbiassed Person, that the Conqueror did not lay by his Sword after the Battel of *Hastings*.

F. In answer to what you have now said concerning your Conqueror's taking away the Lands of a great many of the *English* Nobility and Gentry, it is so apparent in Matter of Fact, that it were a high Piece of Impudence to go about to deny it ; yet will it not therefore follow, that what he thus disposed of was near all the Lands of *England*, as I shall shew you by and by : But in the mean time, to let you see that I am a fair Adversary, I will at present suppose, that King *William* took away all the Lands from the former Owners, and gave them to his Followers, who help'd him in his Conquest ; but these were not only the *Normans*, his Subjects, but *French*, *Flemmings*, *Anjovins*, *Britons*, *Poitlovins*, and People of other Nations, who made up a great Part of his Army, and came in with him under divers great and considerable Men, their Leaders ; and whom, your Doctor tells us, came not out of stark Love and Kindness, without any Consideration of sharing with and under him in the Conquest. Now I desire to know by what Law or Act of theirs, they thus constituted King *William* an Absolute Monarch over them, and their Descendants ? For, as for the *Normans*, tho' they were (it's true) his Subjects, yet they enjoyed divers considerable Rights and Privileges at home, and surely never intended to come over hither, to make themselves as great Slaves as the People they had conquer'd ; much less can it be supposed of these of other Nations, who were not Subjects to Duke *William* before he was made King. Nor can I see how their taking of Lands from him, could make him become an absolute and irresistible Monarch over them, and their Descendants. So that if upon your Supposition, all the Owners of Land in *England* at this Day, hold their Estates either by Descent or Purchase from those Ancient *Normans*, or *French* Proprietors, they must also succeed to the same Liberties and Privileges as those under whom they claim, did formerly enjoy ; and therefore can no more than their Predecessors, be absolute Vassals by Right of Conquest. But before I conclude, I cannot but take Notice of what you have

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said against my Proofs of the formal Election of King *William* ; for if the keeping of a Guard about the Place where the King is Elected and Crown'd, should void the Freedom of the Election, I doubt whether the Election of any elective Kings or Monarchs, even of the *German* Emperor himself, would hold good. As for the other Reason, that they could not chuse but elect him, that is yet more trivial ; for there being no more than one that stood to be chosen, they could indeed chuse no other : But if not having a Liberty to refuse, must void the Right of Election, pray consider (as I told you before,) Whether there be any Canonical Election of Bishops in the Church of *England* at this Day. Therefore I doubt not but that King *William* I. was as lawfully and freely elected, as King *Edward* the Confessor, his Predecessor, whom all Authors agree to have had no other Title ; and *Willielmus Gemeticensis*, in the Place I now cited, tells us, he was elected King as well of the *Norman* as *English* Nobles : And if the Custom had not then been to elect the King before he was Crown'd, it is not likely that your Conqueror would have introduc'd a new Custom to the Prejudice of his pretended Right by Conquest. But indeed there is not any more cogent Argument to prove that the Crown was formerly elective, than the constant Usage (as you your self confess) ever since your pretended Conquest to this Day, of asking the People whether they are content to have such a one for their King. As for your Doctor's Quotation out of *William of Poitlou*, pray take Notice, that he places your Conqueror's Hereditary Bequest, together with the Oaths of the *English*, as his best Title, and the Right of War last ; by which this Author did not understand a Conquest of the People of *England*, but his prevailing against *Harold*.

B. A. P.

M. I do own with the learned Dr. B. that the Descendants of those ancient *Norman* and *French* Earls and Barons that came in with the Conqueror, and their Posterity afterwards, feeling the Yoke of feudal Tenures, and other Prerogatives this King and his Descendants exercised over them, to press as hard upon them, as on the ancient *English*, were those that made such a Disturbance for their Right and Liberties in the Reign of King *John*, and *Henry* III. And tho' I grant their Ancestors were never conquer'd, and consequently could not be obliged to him, as to a Conqueror ; yet I may, for all this, maintain, that they and their Posterity were as much bound to an absolute Subjection, without any Resistance, as the *English* whom they conquer'd ; for they were either his own Subjects in *Normandy*, before his coming over hither ; or else were such Volunteers who followed him out of Hopes of Estates and Preferment. As for all those of the former sort, and who were his Subjects before, they were tied not only by their own Oaths of Allegiance which they had taken in *Normandy*, but were also bound by the same Obligation of Non-Resistance, as all other Subjects must always be, both in that and all other Governments. To all which was added another Obligation in respect of those who were not his Subjects before his Entrance ; since this whole Kingdom was by Conquest the Conqueror's, as appears in that he bestowed the greatest Part of it upon his Followers, (whose Blood runs at this Day in the Veins of most of our *English* Gentry and Nobility,) as a Reward for their Service and Assistance : Tho' he might leave some part to the *English* Natives and their Heirs ; yet so as that he altered the Tenure, and made it descend with such Burdens as he pleased to lay upon them. So that as well his own Countrymen, *Normans*, as those of all other Nations, who thus became Subjects and Feudataries to him for all the Lands they possessed in *England*, (since he was the only *Directus Dominus*, or Lord Paramount of the whole Kingdom) were also his Vassals and Subjects ; for in case of Treason and Rebellion, or Death without Heir, those Lands were to return to him again, and to be at his Disposal. So that all Subjects, as well *Normans* as other Foreigners, who had Lands granted to them by the Conqueror, thus became his *homines Legei*, Liegemen, and did owe Faith and true Allegiance to him, as their Supreme and Liege Lord, as the King is called in several Statutes ; and the Definition of Liegeancy is set down in the grand Customary of *Normandy*, *Ligeantia est ex qua domino tenentur vassalli sui, &c.* that is, Liegeancy is an Obligation upon all Subjects to take part with their Liege Lord against all Men living, to aid and assist him with their Bodies and Goods, and with their Advice and Power ; not to lift up their Hands against him, nor to support in any wise those who oppose him. And tho' I grant, that the Supreme or Liege Lord is likewise bound to govern and defend his Liege People, according to the Rights, Customs,

Customs, and Laws of the Country ; yet is he not liable to Resistance, much less Forfeiture if he neglect it. For though if Subjects break their Covenants, and prove disloyal, all their Lands and other Rights are forfeited to the King ; yet, if the King or Supream Lord break his Oath, notwithstanding his siling therein, neither his Crown, nor any Rights belonging to his Royal Dignity are thereby forfeited. The Reason of this Inequality is because the King gave Laws to the People, but the People did not give Laws to him. So that it is plain, that however you state the Conqueror's Entrance, whether by the Sword, or (to avoid the Envy of the Title of a Conqueror) by a voluntary Submission of the *English* Nation to him, as to their Sovereign ; the Conclusion cannot vary, because the Duty of Non-resistance arises from their own Act, they taking an Oath of Allegiance to be his True and Loyal Subjects, with which Oath Resistance can by no means consist.

F. I must beg your Pardon if I cannot take what you have now said for a satisfactory Answer ; since I doubt it will do you little Service, whether you make use of it either in respect of the *Normans*, or other Foreigners. For as to the former, it appears from the ancient Constitution of *Normandy*, that the Duke was no Absolute Monarch there, but a Feudatary to the King of *France* ; and farther, could make no Laws, nor impose Taxes in *Normandy*, without the Consent of the Estates of that Dutchy ; as appears by the Title to the *Latin* Customs of *Normandy*, which are at the End of the Old *French* Edition of the *Consuetudine de Normandie*, Printed at *Roan*, 1515 ; the Title of which is thus, *Jura & Consuetudines Ducatus Normaniae*. The Prologue to which begins thus ; *Quoniam Leges & Instituta quæ Normanorum Principes, non sine magna provisionis Industria Prelatorum, Comitum, & Baronum, nec non & ceterorum virorum prudentum consilio, & Assensu ad salutem humani fœderis Statuerunt*. Whereby it is apparent, that the Antient Laws of *Normandy* were made by the Advice and Consent of the Estates, for the Preservation of that Covenant they had formerly made with their first Duke *Rollo*, when he had that Dutchy granted him by the King of *France*. And whoever will consult the antient Histories and Laws of that Dutchy, will find the Dukes of *Normandy* no more absolute Monarchs there than the Kings of *Norway*, from whence they came ; so that if their Duke should have gone about to take away their Estates, or enslave the Persons of the *Norman* Nobility and People, he might justly have been resisted by them. And therefore their taking Lands from *King William* after his pretended Conquest here, must either have conferred an Estate upon them according to the Laws of *England*, or *Normandy* ; not according to the former ; for you assert, that Tenures in *Capite*, and Knight's Service, were introduced by his coming ; so that if they were by the *Norman's* Law, (as you suppose) they were then no farther Subjects to their Duke by that Tenure, when made King of *England*, than they were whilst he was Duke of *Normandy*, viz. only according to the Laws and Customs by which they held these Estates : So that if their Duke was irresistible by them in Case of Tyranny in his own Country, so he was also here by the same Reason ; since whatever he did in respect of the *English*, he could acquire no new Right over them.

And that an Oath of Homage alone, doth not make the Person to whom it is taken irresistible, if he makes an unjust War upon his Vassals, appears by the Dukes of *Normandy* themselves, who though they held that Dutchy by Homage to the King of *France*, and took the same Oath to him upon every King's Accession to the Crown, of being his Liegeman, and to be True and Faithful to his Lord the King of *France*, for the said Dutchy of *Normandy* ; yet might the Dukes of *Normandy*, without any Imputation of Rebellion, have resisted the King of *France*, in case he made an unjust War upon them ; nor were ever those Dukes accused of Rebellion for so doing, in all the Wars that they had with the Kings of *France*. And therefore the holding of an Estate by Homage and Fealty, doth not suppose that the Lord of whom it is held was irresistible, nor doth the Word Allegiance signify any more than that Duty which the Liegemen, by the Old *Norman* Law, owed to their Supreme Lord of whom they held their Lands. And therefore when the King or Supreme Lord of the Fee did not perform his Part of the Contract, but went about to turn them out of their Estates, or to invade any of their just Rights by Force, it was usual for the Tenants in those Times to defy the Lords, and renounce their Homage to them ; for which they used the Barbarous *Latin* Word *diffidare*, in *French* to defy, that is, to renounce that Faith and Allegiance, which before they owed them ; and the Supream Lords also often-

*Vid. Spelman's
Glossary, in
v. diffidare.
P. 322*

H. d. p. 358.

times defied their Tenants. Thus *Mat. Paris* tells in *Anno 1233*, that *K. Henry* the Third, by the Counsel of the Bishop of *Winchester*, defied *Richard* the Earl Mareſchal. And the Year following we find the Earl juſtifying himſelf in this manner (being then in *Ireland*); “*First I anſwer, that I never acted Treasonably*” “*againſt the King, for he has unjuſtly ſpoil’d me of my Office of Mareſchal,*” “*without the Judgment of my Peers, and has proclaimed me baniſh’d thorough*” “*all England; he has burnt my Houſes, deſtroyed my Lands, &c. he has more*” “*than once defied me, when I was always ready to ſtand to the Judgment of my*” “*Peers; from which time (ſaid he) I ceaſed to be the King’s Liegeman, and was*” “*abſolved from his Homage, not by my ſelf, but by him. And whereas you ſay,*” “*that the King, or Supreme Lord, cannot forfeit his Right, though he breaks his*” “*part of the Compact, becauſe of the Inequality which there is between a King*” “*and a Subject: If ſo, then this Prerogative of Non-Reſiſtance doth not belong to*” “*the King, as he is Supreme Lord of the Land, but as he is King, and giveth Law*” “*to the Subjects; which may have ſome Colour of Truth in Abſolute Monarchies,*” “*but was of no Force either in the Government of Normandy or England, where*” “*the Duke or King, without the Conſent of his Eſtates, never could alone make*” “*Laws. But as I will not deny our Government to be a Monarchy, ſo it is as cer-*” “*tain, that it is limited in the very Conſtitution, either by the Saxons or Normans,*” “*begin where you pleaſe: And therefore my Concluſion ſtill holds good, that if*” “*the Engliſh have now ſucceeded to thoſe very Lands and Privileges which the Nor-*” “*mans anciently enjoyed, then whatſoever Right or Liberty the Engliſh Proprietors*” “*of Eſtates do at this Day enjoy, they do not only hold them as the Succeſſors*” “*and Deſcendants of thoſe Normans and Frenchmen, but are alſo reſtored to them*” “*Jure poſſiminii*” “*(as you Civilians term it) ſince they never ſubmitted themſelves,*” “*or took an Oath of Allegiance to King William and his Heirs, but only to himſelf*” “*Perſonally; there being no ſuch Clause in any Oath of Allegiance, till it was ſo*” “*ordained many Ages after in the Reign of King Henry the Fourth; nor was this*” “*Oath ever taken by our Engliſh Anceſtors to K. William as to a Conqueror, but the*” “*lawful Succeſſor of K. Edward the Confeſſor; and K. William’s actual taking away*” “*the Eſtates of a great many of the Engliſh Nobility and Gentry, contrary to his*” “*own Oath, and without any juſt Cauſe, could no more give him a Right ſo to do,*” “*than if Henry the Fourth, or Henry the Seventh, both which came to the Crown*” “*by the Aſſiſtance of a Foreign Force, ſhould upon a Pretence of being Conquerors*” “*have govern’d by an Army, and ſo have taken away whoſe Eſtates they pleaſed,*” “*and given them to their Followers that came over with them.*”

M. I ſhall not diſpute this Matter with you any further; therefore pray proceed to the other Point you took upou you to prove, that King *William* did not take away ſo great a Share of the Lands of *England*, as the Dr. and thoſe of our Opinion affirm.

F. I ſhall obſerve your Commands; and therefore in the firſt Place I deſire you to take notice, that according to the Doctör’s own ſhewing, your Conqueror never took away the Lands of all the Biſhops and Abbots of *England*, much leſs thoſe that belonged to Deans and Chapters, or to private Churches; and if his Nobles or Followers had unjuſtly diſſeized any Biſhop or Abbot of their Eſtates, the King cauſed them to be reſtored again; as appears by many Preſidents of this Kind, which are to be found in *Ingulphus* and *Eadmerus*. This being premiſed, let us ſee in the next Place, what Proportion the Lands belonging to the Church, did in thoſe Days bear to the reſt of the Lands in *England*. Now we find in *Sprot’s* Chronicle, as alſo from the old Leiger-book, cited by Mr. *Selden* in his *Titles of Honour*, and particularly from that *Secretum Abbatis* (formerly belonging to the Abbey of *Glaſſenbury*, and now in the Library of the Univerſity of *Oxon*) that there were not long after your Conqueſt, 60215 Knight’s Fees in *England*, of which the Biſhops, Abbots, and other Churchmen then enjoyed 28015, when it is ſuppoſed this Account was taken. Then it will follow, that in the Reign of your Conqueror there were above 28000 Knight’s Fees, which belonged to the Church. And in theſe we do not any where find that *K. William* diſpoſſeſſed their Tenants of their Eſtates, moſt of which were held in Fee under them, and thoſe Tenants were great and powerful Men in their Countries; and hence we read in the ancient Records and Leiger-Books, of the Barons and Knights, that held of divers Biſhops and great Abbots; ſeveral Examples of which you will find in *Sir Henry Spelman’s* Title *Baro*. Now it is certain that *K. William* could not turn all theſe Men out of their Eſtates, and give them to his Followers, without com-

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mitting Sacrilege, and invading the Rights of the Church, which that King durst not commonly do. So that the utmost you can suppose he could do, was to take the Forfeitures of all such Tenants of the Church, who had taken Part with King *Harold*, or had any ways committed Treason against himself; which were far from the whole Number of them: So that here goes off at once almost a Half of all the Lands held by Knights Service, which the King did never dispossess the ancient Owners of. To these may also be added all Tenants in ancient *Demefne*, all Tenants in *Socage*, as also all Tenants in *Gavelkind*, which in those Days made at least Two Thirds of the Lands of *Kent*, which by the way was never conquer'd, but surrender'd upon Terms, to save their ancient Customs and Tenures, as Mr. *Cambden* himself acknowledges in his Description of this County; besides what was held in other Counties by the same Tenure; as you will find in Mr. *Taylor's* History of *Gavelkind*: All which not being Tenures in chief by Knight's Service, are not register'd in *Domesday-Book*; nor does it appear that the Owners were ever dispossessed of them. To which may also be added the Lands of divers of those smaller *Thanes*, or Officers of King *Edward*, whose Names are found in *Domesday-Book*, who held their Lands *ratione officii*.

To all these we may also add, all such *Norman* Noblemen and Gentlemen, who were many, that having come into *England* in *Edward* the Confessor's Time, and having Honours and Lands given them by him, had continued here ever since: And these were so numerous, that it was thought worth while by King *William* to make a particular Law concerning them, that they should partake of all the Customs, the Rights and Privileges of native *Englishmen*, and pay Scot and Lot as they did; of these were the Earl of *Morton*, besides many others whose Names appear in *Domesday-Book*. And not only these Men but also divers Cities and Towns held Lands of King *William* by the same Rents and Services, as they had formerly paid in the Time of King *Edward* the Confessor, as *Oxford* for Example. But to give an Answer to some of your Instances, as when you say that King *William* gave away whole Counties, as all *Cheeshire* to *Hugh Lupus*, and the greatest Part of *Shropshire* to *Roger de Montgomery*, &c.

Vid. Leges
Guthelmi.

Vid. Domesday
Book in Oxford-
shire.

It is a great Error to suppose that these Earls had all the Lands mentioned in these Counties to dispose of at their Pleasure, and that they turned out all the old Proprietors, which it is certain they did not; as I could prove to you by several Instances of ancient *English* Families who have held their Lands and enjoyed the same Seats they had in the Conqueror's Time. So that you see there is a great deal of Difference between a Grant of all the Land of a County, and that of a whole County: What is meant by the former is plain, but as for the latter it generally implies no more than the Earldom or Government of that County. Thus whereas your Dr. would have it, that the greatest Part of *Shropshire* was given to *Roger de Montgomery*, *Domesday* only says, that he had the City of *Shrewsbury*, & totum Comitatum, and the whole County: But that is soon explained by what follows, & totum Dominium quod Rex ipse tenebat; where it is plain that by *Dominium* is meant no more than that Power to govern it, and receive a Third Part of the Fines and other Profits to his own Use, which King *Edward* had; for otherwise the Grant of totum Comitatum, had been sufficient.

B. A. A. p. 92,
93.

M. I confess this is more than ever I heard, or considered before, concerning this Matter; but you do not give me any positive Proof that at the Time when *Domesday Book* was made, there were any *Englishmen* who held Earldoms, or Baronies, or other great Estates of the King, or any of his great Men; so that what you have said hitherto, tho' it carries a great Shew of Probability, yet is no positive Proof against the Dr.'s Assertion.

F. I shall not go about to deny what *William* of *Malmsbury*, and *Henry* of *Huntington* so positively affirm, that for some time before the End of King *William's* Reign, there was no *Englishman* a Bishop, Abbot, or Earl, in *England*; yet does it not therefore follow, that it was thus through his whole Reign, or if it were so, will it therefore follow, that there were few *Englishmen* who, when *Domesday-Book* was made, possessed any Lands in *England*. But that in Part of King *William's* Reign there were many *English* Earls and Barons, appears by above a dozen Charters cited by Sir *William Dugdale*, in the *Saxon* and *Latin* Tongues, in his *Monast. Anglic.* which are either directed by King *William* to all his Earls or *Thanes*, or else in *Latin*, *Omnibus Baronibus, Francigenis & Anglis*; or else *Omnibus Baronibus & Fidelibus*

Et Fidelibus suis, Francis & Anglis salutem. The like Charters also appear of *Hen. I.* and the Empress *Maud* his Daughter. So that if *Francigena* and *Francus* signify a Frenchman, and *Anglus* an Englishman, and if *Fidelis* does (as your Dr. would have it) signify a Tenant *in Capite*, then I think nothing is plainer than that there were, for great Part of King *William's* Reign, both Earls, Barons and Tenants *in Capite* of *English* Extraction.

But to come to particular Persons; it will appear by many *Saxon* or *English* Names in *Doomsday-Book*, as also by several Recitals therein, that there were divers *English* Noblemen or Gentlemen, who held Lands in divers Counties of *England*, at the Time when that Survey was made. And for Proof of this, since so short a Conversation as ours will not permit me to run into a long Bed-Roll of Names, I refer you to what the learned and ingenious Mr. *Atwood* in his *Jus Anglorum ab antiquo*, has observed out of *Doomsday-Book* upon this Subject; where tho' he has gone over but Fifteen Counties of Thirty, that are surveyed in that Book, yet it will thereby sufficiently appear that your Dr. is much mistaken when he so positively affirms, that there were few or no *Englishmen* that held Lands in *England*. But to give you a Taste of this, I shall run through as many Counties as Mr. *Atwood* has given us the Names of: To begin which Survey, (where besides the Earl of *Morton* above-mentioned, who tho' he was a *Norman* born, yet he was here before the Entrance of the *Norman* Duke, and held *Esfrehaw* in *Tenrige* Hundred in the Time of King *Edward*) there was also *Hugo de Port*, an *Englishman*, who was a very great Proprietor, as may be found under this Title in *Doomsday-Book*, *Terra Hugonis de Port*. Many Manors he had, as thereby appears; in *Hampshire* he had at least Two Mannors, *Cerdeford* and *Eschetune*, from his Ancestors before King *William's* Entrance; and besides this Gentleman, (and the Earl above-mentioned,) there are no less than Ten or Eleven, who as it appears either by their *English* Names, or else by this Note which so frequently occurs, *Idem tenuit T. R. E. i. e. tempore Edwardi Regis*, i. e. held the same Lands they and their Ancestors did in the Time of King *Edward*. The like I may say for the other Counties there mentioned, as *Hampshire* in the next Place, where besides *Ralph de Mortimer* who had several Lands, *T. R. E.* there are no less than above Thirty Freeholders more, who by their *Saxon* Names and want of Sir-Names, seem to be meer *English*, divers of whom held the same Thane-Lands, which themselves or their Fathers did in the Time of King *Edward*. And tho' in *Buckinghamshire* and *Berkshire* indeed there are but Five or Six, who held the same Lands which they or their Ancestors possessed in the Time of the Conqueror; yet in *Wiltshire* and *Dorsetshire*, there appears between Twenty and Thirty *English* Proprietors; many of whom held whole Townships when this Survey was made. In *Somersetshire*, *Devonshire*, *Staffordshire*, *Yorkshire* and *Gloucestershire*, their does appear in most of them a Dozen or more *English Saxon* Names, who held whole Manors. 'Tis true that in *Nottinghamshire*, *Lincolnshire* and *Herefordshire*, there appear fewest *English* Names, and yet the least of these have Three a-piece.

So much may suffice for *Doomsday Book*: And I doubt not if any one will take the Pains to look over the Titles of the rest of the Counties, he may find enough Instances of the like Nature, sufficient to prove that the *English* were not wholly dispossessed of their Estates, at the latter End of King *William's* Reign, when this Survey was made. Not to mention *Northumberland*, *Westmorland*, and the Bishoprick of *Durham*; all which are omitted.

But that the Number of *English*, which held the Lands in the Time of King *William I.* and *II.* was very considerable, may appear by *William* of *Malmesbury's* relating how the *Norman* Lords then in *England*, would have dethroned *William Rufus* and have set up his Brother *Robert* in his Place, who there also shews the Manner how that King prevented it. *Rex Videns Normannos penè in una Rabie conspiratos, Anglos probos, & fortes viros, qui adhuc residui erant invitatoris scriptis arcessit; quibus super injuriis suis Quirimoniam faciens, bonasque Leges & Tributorum levamen Liberasque venationes pollicens, fidelitati suæ obligavit*; where *Residui* must certainly be meant of the Residue or Remainder of those *English* Gentry, whose Estates were still left; and herein *Ordericus Vitalis* is more express, that King *William* as soon as he saw the Contrivance against him; *Lanfrancum Archiepiscopum cum Suffraganeis presulibus, & Comites Anglosque Naturales convocavit, & Conatus Adversariorum, & velle suum expugnandi eos indicavit.*

M. As for Mr. *Atwood's* Catalogue of *English Names* from *Doomsday Book*, I have not yet examined them; and tho I grant there are, and may be divers who held the same Lands that they, or their Fathers did, yet they are but a few in respect of the rest: nor are we certain that all these were native *English*, and not *Normans*, who held those Lands as well then as before the Conquest, since the *Norman* and the *English* Names were often the same. And as for the want of Surnames, that is no Argument they must needs be *English*, since in those days very few, even of the *Normans*, but Persons of Quality and Estates, had any; as Mr. *Cambden* shews us in his Remains. But as for those Expressions in the Charters of King *William* and his Sons, wherein the *English*, as well as the *French* Earls and Barons, are mentioned; those Charters might be made during the three or four first years of King *William's* Reign, when I grant the *English* were not wholly dispossessed of their Estates, but that there were some of them that still held Earldoms and Baronies in their own Right; but when the same Expressions occur after that time, the word *Angli*, or *Angligene*, must be understood in another sense, tho it seems B. A. A. to be put in opposition to *Franci*: for as by these last are to be understood such *French* or *Norman* Barons, who had Estates in *England* as well as in *France*; so by the former could be only meant such *Frenchmen* or *Normans* who had Estates in *England* only, or else tho *French* by Original, were *Englishmen* by Birth, and are here called *Angli* and *Angligene*, to distinguish them from such *French* Barons as are above-mentioned, or from such as were born in *France*. And for the truth of this, I desire you would consult Dr. *B's* learned Glossary, at the end of the Folio Edition of his Answer to Mr. *P.* and his two Seconds, *Tit. Angli* and *Angligene*; where he tells us, that these *Angli* and *Barones Anglia*, mentioned in these Authors and antient Charters, were not *English* but *Normans*, and those Men of no mean or ordinary Rank, but Earls or Barons; for they could never have met in such numbers, as were requisite for them to do, to protect and defend King *William Rufus*, had not they been headed by such, if they had either Power or Estates left, that depended not upon the *Normans*. And if you, or any Man, can shew me an *English Saxon*, that was then either Earl or Baron, or had any share in the Government, or any that had considerable Estates that did not hold them of the *Normans*, or had at that time any great Woods, Forests, or Privileges of hunting in them, then I will confess my self mistaken. As for *W. Malmesbury's* saying, these were *Angli prohi qui residui erant*, these were only the *antiqui & legitimi Barones*, who, as *Ordericus* tells us, came in with his Father, and settled themselves here after the Conquest.

And as for your Quotations out of *William of Malmesbury*, and *Ordericus Vitalis*, concerning the *English* assisting King *William Rufus* against his Brother *Robert*, by using the common bait of Liberty, viz. promising that he would alleviate the rigid Laws of his Father, and give free liberty of hunting in his Forests; 'tis true, he thereupon raised an indifferent Army, consisting chiefly of *English*, who, as *Matthew Paris* tells us, were no better than mercenary or stipendiary Soldiers, and who had either no Estates, or else had been turned out of them before: so that this does not prove that they were *Englishmen* of any Fortunes who thus assisted *William Rufus*. B. A. P. p. 50.

F. As for what you have now said against the Citations of the Names out of *Doomsday-Book*, it is not material; since if *English* Names were then common to the *Normans* and them, then the *Norman* Names might be as well common to the *English*; and then many of those in *England*, whom by their Names we suppose to have been *Normans*, might be native *Englishmen*. And as for what you urge against the express words of the Charters I have now cited, I think it is a downright wresting of the words *Francis* and *Anglis*, since no Author that I know of but your Doctor is of that Opinion: For that the word *Franci* or *Francigena* does signify such *Frenchmen* who held Baronies in *England*, is granted on all hands; but how *Angli* must also signify *Frenchmen*, seems a Paradox to me: for how could these *Frenchmen* or *Normans* be termed *Englishmen*, only because they held Estates here and not in *Normandy*? For if the having such and such Estates in *England* would have turned *Frenchmen* into *Englishmen*, there needed no such distinction to have been made between *French* and *English* Barons in these Charters; since, according to your

Doct^r's Notion, the *French* Barons could be no otherwise mentioned here, but as they had Estates here, and therefore could be only writ to in that Capacity, since as mere *Frenchmen* they had nothing to do here: so that if this Epithet was in respect of the Tenure of their Lands, they would have been stiled *English* Barons as well as the other. Nor is your other Evasion more to the purpose, that by the *Angli* might be meant in the Charters of King *Henry I.* such *Norman* or *French* Barons, who because they were born in *England*, might therefore be called *English*: for who can believe that in so small a time, as from the beginning of the Reign of King *William I.* to that of King *Henry I.* which was but a little above thirty years, so many of the *Norman* Nobility were dead, as should make it necessary to use a new Distinction of *French* and *English* Barons; since by their Tenures they were both alike *English*? And indeed thus to make *Angli* signify *Normans*, is to confound and make all words, tho' ever so plain, uncertain and equivocal. And as for what *Ordericus* says of the old *Norman* Barons, it would have signified something, if you could have proved he had called them *Englishmen*, as he does not: but if you carry it further to the time of the Empre^s *Maud* and King *Stephen*, when all the old Race of *Normans* were certainly dead, then there was much less need of this Distinction, when all that were born in *England* were *English* alike; and therefore the word *French* could only extend to those few Barons, who being born in *Normandy*, had Estates here.

But since you are forced to confess, that for the first four or five years of King *William I.*'s Reign, there were both *English* Earls and Barons, till the King had by degrees rooted them out, there cannot be a better Argument against your pretended Right of Conquest; since it is plain, King *William* could never pretend to take away their Honours and Estates as a Conqueror, since by his Coronation-Oath he was sworn to restrain all Rapines and unjust Judgments, and that he would behave himself mercifully toward his Subjects, and treat both the *English* and *French* with equal Right: so that if he afterwards took away the Estates of *English* Nobility or Gentry, it was either because they deserved it by rebelling against him, and then it was justly done, or else it was done without any cause at all, but only to oppress and root out the *English* Proprietors; and if so, such Actions being contrary to his own Claim from *Edward the Confessor*, as also to his Coronation-Oath, could no more give him any such Right to rob or spoil Men of their Estates without any just cause, than it could give him a Right to rob the Churches and Monasteries of all the Plate, Mony, and Jewels which he found in them, even to the very Chalice^s and Shrines, as *Matthew Paris* and other Authors tell us he did in the fourth year of his Reign; when likewise (according as you your self set forth) he began to shew himself a Conqueror, or rather a Tyrant, in thus committing Sacrilege, and taking away the Estates of the *English* without any just cause.

But however, the Authors of that time do not make so great a Tyrant of your Conqueror as the Doct^r; for *William of Poi^tou* expressly tells us, who was Chaplain to this King, concerning his taking away the Estates of the *English*, and giving them to the *Normans*, that *nulli tamen Gallo datum est quod Anglo cuiquam injustè fuerit ablatum*. And *Ordericus Vitalis*, speaking of his dealing with the *English* at the beginning of his Reign, says expressly, *Neminem, nisi quem non damnare iniquum foret, damnavit*.

I shall now conclude with a Reply to what you have said, to evade the Authorities of those antient Authors I have brought to prove, that in the beginning of the Reign of King *William the Second*, there were many *English* Gentlemen left of considerable Estates, whom you and your Doct^r would fain make to be no better than mere Mercenaries; which is expressly contrary to the Authority of *Matthew Paris*, whom you your self have cited in this Point, as also all other Authors who have wrote of this matter: for *Matthew* has immediately before these words, *Videns igitur Rex Willielmus, omnes penè Regni procures unâ rabie conspiratos, Anglos fortitudine & probitate insignes, faciles leges & tributorum levamen, illis venationes libera^sque promittendo sibi primò devinxit*; and almost makes use of the very words that *Malmesbury* had done before. Now I desire you or your Doct^r would satisfy me, how Men, who were remarkable for their Valour and Honesty, and who were so considerable, as to be sent for by Letters writ on purpose, and when they came, should be promised

mis'd easier Laws, free Hunting, and a Relaxation of Taxes, all which are Privileges belonging to Men of Estates, could be mere Soldiers of Fortune? And to make it plain that they were not the King's, but their own Woods they were to hunt in, *Roger Hoveden* speaking of this very matter, tells us, *Et concessit omnibus sylvas suas, & venationem: Sed quicquid promisit parvo tempore custodivit, Angli tum fideliter eum juvabant.* But that he did not keep his Promise as to hunting, as well as other things, appears by a Passage in *Eadmerus*, where he gives us an Example of King *Rufus's* harsh Nature, "That about fifty
" Men of the antient *English* Gentry, who in those days enjoyed some Re-
" mains of Riches, were taken and accused, that they had killed the King's
" Deer;" and having for this undergone the Trial of Fire and Water, he was in a great Rage about it: which is sufficient to shew you, that there were at this time many *English* Gentlemen left of sufficient Estates to use Hunting, either in their own or the King's Woods. As for what you urge further against Mr. *A's* Instances out of *Doomsday Book*, it is not considerable; since it is only an Exception against the Names of Persons there mentioned, that they were not native *English*, but *Normans*, who either were born, or had Lands in *England*, or else had the same Names with the *English*; both which are *gratis dicta*: for *Doomsday-Book* plainly says, either that they or their Ancestors were here before your Conquest, or else their Names being wholly *English-Saxon*, it lies upon your side to prove, that they were *Frenchmen* or *Normans* by Original, which I believe is more than you or your Doctor is able to do.

F. I cannot blame you if you do what you can to evade this Testimony from *Sharnborn's* Book, which gives so exact an account of the Original of those Tenants who held of the King, as Sir *H. Spelman* tells us, *per servitium Dren-* Glossary, Title
garii; and such Tenants were called *Drenches* or *Drenges*, as this Book of *Sharn-* Drenches.
born tells us. But tho it is true, as this Book it self sets forth, *Edwin* of *Sharnborn* was never restored to all the Lands he held before the Conquest; yet it is plain, that he had the King's Mandate for his Restitution: and if he could not obtain it, by reason of the great power of the present Possessors, yet that is no Argument against his Right, or King *William's* Intention to restore him; since *Ingulph* tells us, that *Ivo Talbois* seized the Cell of *Spalding*, and divers Lands belonging to the Monastery of *Croyland*, and kept them by force, notwithstanding a solemn Hearing before the King and Council. And if a great Man could do this with the Lands of the Church, it is no wonder that so powerful a Person as Earl *Warren* could, by his Power, or perhaps by the Connivance of King *William* himself, keep another Man's Estate, and make him contented with such a share as he would allow him, when he found he could have no other remedy against those that thus unjustly detained it.

Hist. p. 71,
72, 95. Edit.
Oxon.

But tho in the beginning of your Discourse you seem to allow a part of the Story, as it is related in *Sharnborn's* Manuscript, and produce the Testimony of *Bracton* and *Fleta*, to prove that divers antient *English* Proprietors, who being thrown out of their Estates by powerful Men presently after the Conquest, were fain to take them again upon performing of Villain Services, tho they themselves remained free Men; yet your Doctor, from whom you borrow this, is very much out in his Application of those Passages he cites: for neither of those Authors do affirm this of all Owners of Lands whatsoever, but only there to give us the Original of Socage-Tenants on the King's Demesnes, as appears by *Bracton's* Title to that Chapter, from whence the Doctor cites this Passage, which is, *De diversis conditionibus personarum tenentium in Dominicis Domini Regis.* And the first words of this Chapter make it yet plainer, beginning thus, *In Dominico Domini Regis plura sunt genera hominum, sunt enim ibi servi sive natiui, ante Conquestum, in Conquestu, & post Conquestum;* and under these last ranges the Persons you mentioned. But *Fleta* is more exact in his Chapter *de Sokemannis*, where he tells us, that these Men were Tenants of the King's antient Mannors in Demesne; *Et quia hujusmodi cultores Regis dignoscuntur, provisa fuit quies, ne sectas facerent ad Comitatum, vel Hundredum tamen pro terra, quorum congregationem tunc socam appellarunt, hinc est quod Sokemanni hodie dicuntur esse.* So that tho King *William* might permit his antient Tenants to be thus outed out of the Estates they held in his own Demesnes, yet does it not therefore follow, that he took away the Estates of

the antient Owners all over *England*, of whatsoever Tenure they were, or of whomsoever held. But as for your Quotation out of *Matthew Paris*, it proves no more than what I readily grant, that King *William*, after his return out of *Normandy*, liberally rewarded his Followers with the Estates of the *English*, which might be only of such as fought against him at the Battle of *Hastings*; and as for that little which was left them, which he says was put under the Yoke of a perpetual Servitude, he means no more by this Expression, than that new Tenure of Knight's Service which King *William* imposed upon them; as this Author in the very next Leaf observes, where he speaks of the Lands of the Bishopricks and Abbies, which were held before free from all secular Servitude, *sub servitute statuti militari*.

Hist. Nov.
fol. 6. n. 10,
20, 30.
B. A. P. p. 32.

M. I will not undertake to prove that he quite altered the antient Laws of *England*, and brought in quite new ones; yet that he did so in great part, and that by his sole Authority, I think I can prove by sufficient Testimonies: and therefore I shall begin with that of *Eadmer*, a Monk of *Canterbury*, a Companion of Archbishop *Lanfranc's*, who tells us in his History, "That *William* designing to establish in *England* those Usages and Laws, which his Ancestors and he observed in *Normandy*, made such Persons Bishops, Abbots, and other principal Men, thro the whole Nation, who could not be thought so unworthy as to be guilty of any Reluctancy and Disobedience to them, knowing by whom, and to what they were raised; all divine and human things he ordered at his pleasure." And after the Historian hath recounted in what things he disallowed the Authority of the Pope and Archbishop, he concludes thus: "But what he did in Secular Matters, I forbear to write, because it is not my purpose, and because also any one may, from what hath been delivered, guess what he did in Seculars." From which I think nothing is plainer, than that King *William* did not only design to alter many things in the Laws and Customs of *England*, but did also actually do it; for to what end else did he make the Bishops, Abbots, and other principal Men, who were to be Judges in all Courts? Now that King *William* governed the Nation as Conqueror, and did so live and repute himself so to be, and as such brought in and imposed new Laws upon the People of this Nation, is clear, as I shall prove from these Particulars.

First, The Justiciaries, or chief Justices, the Chancellors, the Lawyers, the Ministerial Officers and Under-Judges, Earls, Sheriffs, Bailiffs, Hundredaries, were all *Normans*, from his first coming until above a hundred years after; as I can make it out by particular Instances and undeniable Reasons, were not the Catalogues too long to be here inserted. If therefore the Justiciaries, Chancellors, Earls, Sheriffs, Lords of Mannors, such as heard Causes, and gave Judgment, were *Normans*; if the Lawyers and Pleaders were also *Normans*, the Pleadings and Judgments in their several Courts must of necessity have been in that Language, and the Law also, I mean the *Norman* Law: otherwise they had said and done they knew not what, and judged they knew not how; especially when the Controversies were to be determined by military Men, as Earls, Sheriffs, Lords of Mannors, &c. that understood not the *English* Tongue or Law; or when the Chief Justiciary himself was a military Man, as it often happened, and understood only the *Norman* Language: and 'tis hardly to be believed these Men would give themselves the trouble of learning and understanding the *English* Law and Language.

Secondly, Tho we have many Laws and Customs from the *Northern* People, and *North* Parts of *Germany*, from whence both *Saxons* and *Normans* came; yet, after the Conquest, the Bulk and Main of our Laws were brought hither from *Normandy* by the Conqueror, from whence we received the Tenures and Manner of holding our Estates in every respect, from whence also we have received the Customs incident to those Estates; and likewise the Quality of them, being most of them feudal, and enjoyed under several military Conditions and Services: so that of necessary consequence from thence we must receive the Laws also, by which these Tenures, and the Customs incident to them, were regulated, and by which every Man's Right in such Estates was secured, according to the nature of them. From *Normandy* (and brought in by the Conqueror) we received most, if not all our antient Tenures, and manner of holding and enjoying our Lands and Estates, as will appear by comparing our antient Tenures with theirs.

F. I shall not deny but a great part of the matter of Fact is true, as you have now put it: yet tho I grant, that the Bishops, Abbots, Chancellors, chief Justices, and other great Officers of the Crown, were all, or the greatest part of them *Normans*, during the Reigns of the two first Kings of the *Norman* Race; it does not therefore follow, that these Men must have made a Change in the very substance of our Laws, tho in matters of Pleading, or judicial Proceedings, they might have introduc'd a great many Alterations: yet as to the Civil or Municipal Laws of this Kingdom, concerning the Descent and Conveyance of Estates, they continued the same after the coming in of the *Normans*: and tho Lands held by Knights Service, descended to the eldest Son; yet Lands in free Socage, and Gavel-kind, to all the Sons alike, as they had likewise done before your Conquest. There were also Estates Tail and Fee simple, as now; and there were also the like Customs of the Courtesy of *England*, Borough *English*, &c. as there are also at this day, as I can prove to you by several passages out of our *English Saxon* Laws. So likewise for Conveyance of Estates, those of the better sort of People call'd *Bockland*, were conveyed by Deeds, with Livery and Seisin, either with or without Warranty, as they are now; but that which was call'd *Folcland*, held by the meaner sort, were only by Livery and Seisin without any Writing. And tho I grant that the Custom of sealing of Deeds is deriv'd from the *Normans*, yet that is an alteration only in matter of Form; and as for Goods and Mony they were bequeathable by a Man's last Will, as well after, as before your Conquest. And if you can have the opportunity to peruse a Manuscript Treatise of Sir *Roger Owen's* upon this Subject, you will find it there sufficiently proved; That Livery of Seisin, Licences, or Fines for Alienation, Daughters to inherit, Trials by Juries, Abjurations, Utlaries, Coroners, disposing of Lands by Will, Escheats, Goals, Writs, Wrecks, Warranties, Felons Goods, and many other parts of our Law, were here in being, long before the time of King *William*. This being so as to the Common-Law, let us see what alterations there were made in the Criminal, or Crown-part of the Law. First, as to Treason and wilful Murder, they were punished with Death in the *Saxon* Times, as well as after; as were also Robbery and Burglary in the Night-time: but as for lesser Offences, such as Batteries, Maims, Robberies, and other Breaches of the Peace, they were punish'd by Fine, as well before the Conquest as after: And as for the Law of *Englesherie*, which was, that if a Man were found murdered, it should be presumed he was an Alien or *Frenchman*, and the Town thereupon where the Body was found was to be fined, unless *Englesherie* was proved, *i. e.* that the Person was an *Englishman*; this Custom, tho it lasted to the Reign of *Edward III.* when it was taken away by a Statute made on purpose, tho it may seem a Badge of the *Norman* Conquest; yet was it indeed a Law first introduc'd by King *Knute* in behalf of his *Danes*, who being often found kill'd, and none could tell by whom, he obtain'd this Law to be made to prevent it; as you will see at large in *Bracton*, and the Mirror of Justices. But as for Trial of all Offences, it was either by Juries, Fire, or Water Ordeal; or else by Witnesses, or Compurgators upon Oath, as well before as after King *William's* entrance. So that I can find nothing material as to the alterations of the Laws, either in matters Criminal or Civil, from what they were in the *Saxons* time; and this being so, it is easily answer'd, how the Judges and Officers might be *Normans*, and yet the Laws continue *English* still: for first it is certain, that for four or five Years, in the beginning of King *William's* Reign, he made no great alteration in the Judges, and other great Officers of the Kingdom; and by that time those whom he was afterwards pleas'd to employ in the rooms of such as either died or were turned out, might very well come to understand the Laws of *England*, as far as they differ'd from those of *Normandy*, which was not in many Particulars; since, as your self very well observ'd, the *Saxons* and *Normans* being both Northern People, had many of the same Laws and Customs common to both, and the same Persons might in three or four Years time have very well learn'd *English* enough to understand the Evidence that the Witnesses gave before them, without any Interpreter.

Glanville,
Lib. 7. cap. 2.

But, say you, all the Pleadings and Judgments were in *French*, and therefore the Lawyers and Pleaders must be *Frenchmen*; this is likewise a false Consequence:

Vid. Coke Pro-
em.

Consequence: for pray tell me, why might not the *English* Lawyers have learnt *French* enough to plead in three or four Years time, which must necessarily be required before so great an Alteration could be made, or Lawyers enough be brought out of *Normandy*, and sufficiently instructed in our Laws and Customs, could be fitted for their Employments? Again, supposing all Pleadings and other Proceedings to have been in *French*, it does not follow that this Practice could have obtained in all the Courts of *England*: for tho I grant it so in the Kings Courts at *Westminster*, where the Judges (as you say) were for the most part *Frenchmen*, or *Normans*; yet this could only affect either that great Court, the *Curia Regis*, where the King often sat in Person, together with his Chief Justiciary, and other Justices; or else the Court of Common-Pleas, which followed the King's Court, till it was ordain'd otherwise by *Magna Charta*; or else the Court of Exchequer, where in those days only matters concerning the King's Debts, Lands, and Revenues were chiefly heard and dispatched. But as for the Court of Chancery, it was not then used as a Court of Equity, nor long after, till the Reigns of *Henry IV, V, and VI.* when it arose by degrees, as you will find at large in Sir *William Dugdale's Origines Juridiciales.*

Vid. Spelman's
Glof. Tit.
Friburgus.

Vid. 4. Inst.
cap. 55, 56, 57.

Vid. Spelman's
Glof. Tit.
Hundredus &
Comitatus.

So that granting all the Proceedings in these Supreme Courts to have been in *French*, because the King himself, who sat there with the Chief Justice, and the rest of the Judges, were either *Normans* or *Frenchmen*; yet was this of no great Importance, in comparison of the more numerous Suits and Causes which were first begun, and try'd in the inferior Courts in the Country, before ever they could be brought up to *London*, by Writ of Error, or Appeal; which could only be in Causes of great moment, or between the King's Tenants *in Capite*: So now to let you see that what I say is true, we will survey all the inferior Courts of that time, beginning with the lowest, and going up to the highest of them. The first Court we find of this kind, was that of the free Borough or Tything, wherein by the Laws of King *Edward the Confessor*, the Tythingman or Headborough was the Judge; who, as that Law tells us, determin'd all Suits and Differences arising among Neighbours of the same Tything, concerning petty Trespasses and Injuries, which if they could not be there determin'd, might then be brought before the Court-Baron, which was incident to every Mannor, and wherein the Suitors, and not the Lord nor his Steward, were the Judges: And this, as Sir *Edward Coke* tells us, was first instituted for the ease of the Tenants, and for the ending of Debts and Damages under forty Shillings at home, as it were at their own doors: And let me tell you by the way, that forty Shillings was then near as much as forty Pound is now. And if the Business could not be ended here, or was of too high a nature, it was then brought into the Hundred-Court, where the Hundreder together with the Suitors were Judges; and if they had not Justice there, they might then remove it into the Court of Tything or Lathe, which was not the smaller Court of the Tything mention'd, nor yet the Court-Leet, but a particular Court consisting of three or four Hundreds; which, tho now quite lost, was in being at the time of the Statute of *Merton*, as I shall shew you by and by: And if the Business could not be decided in the Tything, it was then removed to the Shire, or County-Court, as Mr. *Lambert* shews us from the Laws of King *Edward*; which was then held (as now) from Month to Month, and in which, as well as in the Hundred-Court, the Suitors alone were Judges. And tho it can now only hold Pleas (unless it be by Writ of Justices) of any Debt or Damage to the value of forty Shillings, or above; yet we find from antient Authors, that this Court was so considerable, that we have divers Examples of Causes between the greatest Persons of *England*, and that for Lands of considerable Value, begun and determin'd in this Court. Thus *Ead-*
merrus relates the great Trial at *Pinnenden-beath*, between *Odo* Bishop of *Bayeux*, half Brother to your Conqueror, and by him created Earl of *Kent*, and *Lan-*
frank Archbishop of *Canterbury*, concerning divers Mannors in *Kent*, and other Counties, whereof Earl *Odo* had disseized the See of *Canterbury*, in the time of Archbishop *Stigand* his Predecessor: whereupon the Archbishop petition'd the King, that Justice might be done him, *secundum Legem-Terræ*, and the King thereupon sends forth a Writ to summon a County-Court: The Debate lasted three Days, before the Freemen of the County of *Kent*, in the presence of
many

Vid. Hist. Rad.
Lib. pag. 8, 9.

many chief Men, Bishops and Lords, and others skilful in the Laws; and Judgment pass'd for the Archbishop *Lanfranc* by the Votes of the Freemen; or *primorum*, or *proborum hominum*, as the Historian calls them.

So that to conclude this Head, if no Suit could be begun in those Days, but what was first commenc'd in the Hundred-Court; no *Distingas* could issue forth till three Demands were made in the Hundred, and from thence to be remov'd to the County-Court, where regularly all Civil Causes were try'd by the Suitors as the only Judges, as well as in the Hundred-Court, and Court-Baron: then it will necessarily follow, that, unless you can prove, (which I think is impossible) that all the *English* were at that time Slaves and Villains, and had no Freehold of any sort left them; I say, it will follow that all Pleadings and Proceedings in any of those Courts, being before mere *Englishmen*, must have been in *English*, and no other Language. So that after all this great Cry, not a twentieth part of the Suits in *England*, were brought to *London*: And as for Criminal Causes, unless in Cases of Treason, all Murders, and other Felonies were try'd and judg'd in the Country; either within the particular Jurisdictions of Bishops, Abbots or great Lords, or else of such Cities and Towns who had the Privileges of *Infangthief* and *Outfangthief*, together with *Fossa* and *Furca*; that is, a Pit to drown, and a Gallows to hang Malefactors: and if the Offence was done in the Body of the County, they were then try'd and condemn'd in the County-Court; Justices *Itinerant* not being in use till *Henry II's* Reign.

M. I must confess you have given me a great deal of Light in these matters, more than I had before: but as I shall not dispute whether in the lowest Courts, such as the Tythings and Court-Barons, the smaller *English* Freeholders might not judge of petty Causes amongst themselves; yet in those greater Causes, brought in the Hundred, and County-Courts, only the greater Freemen of the Hundred, or County, were Judges. Who these Freemen were, *B. A. P. pag. 38, 39. Glos.* *Dr. B.* hath sufficiently taught us in his Comments upon the Conqueror's Laws, as also in his *Glossary*, viz. That they were Tenants in Military Service, who in those times were the only great Freemen of the Kingdom, and quite different from our ordinary Freeholders at this day. These were the Men, the only Legal Men, that named and chose Juries; and serv'd on Juries themselves, both in the County and Hundred-Courts, and dispatch'd all Country Business under the great Officers. I do not deny but that there might be other lesser Freemen in those Times; but what their Quality was, farther than that their Persons and Blood were free; (that is, they were not *Nativi*, or Bondmen) it will give a knowing Man trouble to discover it to us. We find in every Leaf of *Doomsday*, *Socmen & liberi homines*, Possessors of small Parcels of Land; but what their Quality was, and of what Interest in the Nation, *Dicat Apollo*, no Man yet hath made it out, nor can it be done by the account we have of ordinary Freemen, for a Century or two last past. *Glos. pag. 29, 30.*

And for further Proof of this, That none but Tenants in *Capite*, or Military Tenants at least, could be Judges in the County-Court, it appears by the Laws of King *Henry I.* wherein it is expressly said: *Regis Judices Barones Comitatus qui liberas in eis terras habent, per quos debent causæ singulorum alterna prosecutione tractari, &c.* *Cap. 1.* So that these Barons of the County being certainly feudal Tenants, this Service of being Suitors to the County and Hundred-Courts, was a Service incident to their Tenures; and then it will also follow, that those *Primores*, and *Probi Viri*, who as you have now related, try'd this Cause between Earl *Odo*, and Archbishop *Lanfranc*; and who (let me tell you) were not only of the County of *Kent*, but of other Counties in *England*, where the Mannors and Lands lay, as *Eadmerus* shews us; and who were the Jurors in this great Cause, consisted of the great Military Tenants, that were not Barons, and the less which were the *Probi Viri*: for it can be no ways probable, that the ordinary Freemen who made the greatest Number, and were all bound to their good Behaviour, could be the *Probi & legales homines*, who serv'd upon Juries. To conclude, if I have already prov'd, that King *William* took away the greatest part of the Lands of *England*, and gave them to *Normans* and *Frenchmen*, who were the only true Freemen or Freeholders of the Kingdom; and as such owed Suit and Service to the Hundred and County-Court, in which (as you your self set forth) all the considerable Actions as well Real as Personal were then commenc'd and try'd; it will also follow, that the Suitors,

Suitors, who were the Judges in those Courts, being for the greatest part at least *Frenchmen*, all the Trials and Proceedings therein must have been in *French*, and not in *English*, which is contrary to what you have undertaken to prove.

Tit. Hundre-
dus.

Cap. 38.

J. A. A. pag.
56, 201.

F. If this be all you have to object against what I have now said, that all Pleadings in the inferior Courts in the Country, must in the time of your Conqueror have been in *French*, and not in *English*; I hope I shall give you very good Satisfaction to the contrary, and shall prove to you, that the very same Persons who were the Suitors or Judges in the Hundred-Court, were also Suitors in that of the County, tho they were of ever so small Estates of Freehold: and that those who were thus Judges in the Hundred-Court, were also the same Persons of which the lowest Court, viz. that of the Headborough or Tythingman, did consist, appears by the very Definition of a Hundred; as you may see it in Sir *H. Spelman's Glossary*, *Est autem Hundredus portio Comitatus, quâ olim debebant centum pacis regie Fidejussores, uti Decuria quâ decem, complexus est igitur Hundredus decem Decurias, ut centenarius numerus decies denarium.* Now that the County-Court consisted of the same sort of Persons with that of the Hundred, is also certain, since all *England* was then (as now) divided into Counties, Hundreds, and Tythings: so that as the Hundred-Court consisted of a hundred Persons, who had all given Pledges to the King, so did the County-Court consist of all the Freeholders or Freemen of the several Hundreds of the County, who all owed Suit and Service to the County-Court; and as such were returnable upon Juries in all Trials in that Court, tho they had ever so small Estates of Freehold; for then there were no Laws that limited the Estates of Freeholders returnable to Juries, upon Assizes or Trials, to the yearly value of forty Shillings. But that these Suitors to the Hundred-Court, must have been for the most part *English* in all your Conqueror's Reign, your Doctor has given us a sufficient Testimony in his Answer to Mr. *A's Janus Anglorum*, p. 35. where he tells us, the Jurors were antiently call'd *Testes*, and often in *Doomsday-Book* it is thus found; "*Testatur Hundredus, Teste Hundredâ*, the "*Hundred witnesseth, that such Land is such a Man's; or by the witness of " the Hundred such Land is such a Man's.*" See the Claims in *Yorkshire, Lincolnshire, and Suffolk*, at the end of that Book. Now the use that I shall make of these words of the Doctors, is this: That in many of these Claims the Issue is, that such a one held the Land, *die quo Rex Edwardus fuit vivus & mortuus.* Now I desire you to tell me, if the Freeholders of the Hundred were all Strangers and *Normans* at this time, as your Doctor supposes they all were that serv'd on Juries in the Hundred and County-Court; how these Men could testify who held the Land at the time of King *Edward's* Death, and by what Services? And I desire you to be pleased to read and consider the Trial mention'd in *Doomsday-Book*, between *Will. de Chorner*, and *Picot* the Sheriff, where the Proof was by the best and most antient Men of the whole County and Hundred, that this Land in question belong'd to *Chorner per hereditatem sui Antecessoris.* So that then the best and antientest Freeholders of the County of *Berks*, were the same who were so in the time of King *Edward*, or else how could they witness this Land to have been held by *Chorner's* Ancestor?

But because you have two or three small Objections against this Truth, I shall endeavour to remove them. The first is, that those who try'd one another's Causes in the County-Court, are in the Law of King *Henry I.* (which you now cited) call'd *Barones Comitatus qui liberas Terras habent.* Therefore you imagine that these *Barones Comitatus* must needs have been all Tenants *in Capite*, or by Knights Service at least, who by virtue of that Tenure ow'd Suit and Service to the County-Court: which is a great mistake; since every Freeholder of whatsoever Tenure, who was resident within the County, owed Suit and Service to that Court, and it was the twentieth of *Henry VI.* which limited that Service only to Freeholders of forty Shillings *per annum*, or above. Now that every Freeholder, tho of ever so small Estate, was antiently a Baron of the County; is also as certain in the antient and larger Acceptation of the word Baron, which did not originally signify only a Tenant *in Capite*, or by Knight Service, but any other Freeholder, who could be return'd upon a Jury concerning Freehold in the County-Court. Now that every Lord of a Manor, and Freeholder, was antiently call'd a Thane before the Conquest, appears by this Law of King *Knute's*, *Et habet omnis dominus familiam suam in plegio suo;*

suo; & si accusetur in aliquo, & respondeat in Hundredo, ubi compellabitur sicut recta Lex sit. Quod si accusetur, & fugiat, reddat Dominus ejus Regi Weram, i. e. pretium nativitatis hominis illius; & si Dominus accusetur, quod ejus consilio fugerit, adlegiet se cum quinque Thanis, (id est Nobilibus) & idem sit sextus, si purgatio frangat ei, reddat ei (scil. Regi) Weram suam, & qui fugerit, extra legem habeatur. I shall not trouble my self to translate this Law, since the *Latin* is plain enough; only take notice that by this word *adlegiet*, is meant he shall wage Law, or make Oath together with five Thanes, that is Noblemen or Gentlemen, & *idem sit sextus*, whereof he himself should be the sixth: where you may see that every Freeholder, being Master of a Family, is here called a Thane, who was to give Pledge or Security, that all his Family should answer the Law in the Hundred-Court for any Offence they should commit; and these Thanes were such as Mr. Lambert expresses by *Ascitis sibi ingenuis quinque*: for what he calls *ingenuus*, Brompton calls *liber homo*, that is, every Freeholder. So that you see Thane, *ingenuus*, and *liber homo*, signify all the same thing; that is, the lower sort of Thane, or Freeholders who owed Suit and Service to the Hundred and County-Courts. And that these very Men were such as after your Conquest were call'd *Barones Comitatus*, appears in this, that those who before the Conquest were call'd Thanes, are afterwards call'd Barons of Counties, in all our antient Laws and Charters: and for this I shall give you the Authority of Sir H. Spelman in his *Glossary*, who tho he does chiefly understand by this word all sort of feudal Barons dwelling in each County, *Proceres nempe & Maneriarum domini*; yet not only these, but *necnon liberi quique Tenentes, hoc est fundorum proprietarii, Anglicè Freeholders, ut superius dictum est.* So that take it in which Sense you will, this word cannot signify only Tenants *in Capite*, or so much as Military Tenants, as you suppose; since a Man might hold a Mannor by other Tenures than Knights Service, as by grand or petty Serjeanty, or in Socage by a certain Rent; and so likewise might he hold any other lesser Estate of Freehold by the like Tenures: which if it were so, your Doctor's fancy of Tenants in Military Service being then the only Freemen of the Kingdom, and who were capable of serving upon Juries in the Hundred and County-Court, is a mere Chimera, without any ground, as I have already proved at our third Meeting; when I shew'd you by the words *liberi homines*, so often mention'd in King William's Laws, are to be understood not only Tenants by Knights-Service, but any other Freemen or Freeholders, who held Lands or other Possessions: which may be also proved farther by the Statute of *Merton*, cap. 10. as appears by this Clause; *Provisum est insuper, quod quilibet liber homo qui sectam debet ad Comitatum, Tithingum, Hundredum, & Wapentagium, vel ad Curiam Domini sui, libere possit facere Attornatum suum, ad sectas illas pro eo faciendas.* Whereby you may see, that every Freeman, who was a Master of a Family, and not under the power of another, was then oblig'd to pay Suit and Service to the County, Tything and Hundred-Courts.

J. A. A. p.
197. Lamb.
leges Ethelredi.
Cap. 1.

Tit. Barones
Comitatus.

But say you, these Persons who were Jurors in this great Cause between Earl Odo and Archbishop Lanfranc, are there call'd *Primores*, and *Probi Viri*, not only of the County of *Kent*, but other Counties where the Lands lay; and it is not probable that the ordinary Freemen, who made the greatest number, and were all bound to their good Behaviour, could be the *Probi & Legales Homines*, who serv'd upon this Jury: Well, I grant it, that these Gentlemen you speak of, might be Lords of Mannors, and considerable for Quality and Estate, and who alone were impannelled upon Juries in this, and other such great Trials of Novel Disseisin; and yet for all that, those lesser Freemen, or Freeholders you mention, were *Legales Homines*, and as such were capable of trying all Causes, of what nature soever; since Sir H. Spelman tells us in his *Glossary*, Title *Legalis*, That in *Jure nostro de eo dicitur qui stat rectus in Curia, non exlex seu utlegatus, non excommunicatus, vel infamis, &c. sed qui & in lege postulat & postuletur. Hoc sensu vulgare illud in formulis juridicis, probi & legales homines.* So that he does not make (as you do) that a Man's Legality must depend upon his Tenure, but upon his being *rectus in Curia*. So that 'tis no more an Argument, that because in some great Trials in those Times, none but the chief and most considerable Men in the County were impannel'd upon Juries in the County-Court, therefore none but they could ever serve there upon Juries at all; than it would be now for a Man to affirm, that because in great Trials at the Af-

sizes, or at the Bar at *Westminster*, only Knights and Gentlemen are impannell'd; therefore none but they, and not any Yeomen, or Countrymen can ever serve upon Juries at all.

B. A. J. p. 34. But let these Gentlemen you mention have been all Tenants *in Capite*, or by Knights-Service, if you please, yet will it not make good your Assertion, that they were only *Normans* or *Frenchmen*; who as the only Proprietors of Estates, serv'd upon this and other Juries at that time: for they must have certainly been such, who of their own knowledge knew the Lands in question, and to whom they did belong before King *William's* entrance into *England*. And your Doctor himself in his answer to Mr. *Atwood's Janus*, fully agrees to this Truth, as appears by this Passage, which I desire you would read. "In Trials of Novel Disseisin, and for the Possession of Lands, Customs, Services, &c. the Juries at the time of the Conquest, and in several of the Kings Reigns next succeeding, were impannell'd out of the same Town and Neighbourhood, of such as did know the Land and things in question, and who had been possessed of it, and for what time. And to this purpose in an Assize, if none of the Jurors knew the right it self, or truth of the matter, and did testify so much to the Court upon Oath, recourse was then had to others, until such were found who did know the Truth; but if some did know the Truth, and others not, those that knew it not were put by, and others call'd into the Court, until twelve at the least should be found to agree therein: and for this purpose it was that all Suitors to Hundred and County-Courts were bound to appear there under great Penalties, that there might be a Jury of such as knew whose the Land was:" And so far your Doctor is very much in the right. But then, that all the Gentlemen that serv'd upon this Jury must be *Englishmen*, is as plain from the Reason he hath now given us: and if he had not told us so, we have an undeniable Authority for it; to wit, the antient MS. call'd *Codex Rossensis*, quoted by Mr. *Selden* in his Notes upon *Eadmerus*; where speaking of this Trial, *Præcepit Rex Comitatum totum (viz. of Kent) absque mora considerare, & homines Comitatus omnes Francigenas, & præcipue Anglos in antiquis legibus & consuetudinibus peritos, in unum convenire*. But it also adds, & *alii aliorum Comitatum homines*, and so confirms what *Eadmerus* says. So that nothing is more evident by your Doctor's own shewing, as also by the Testimony of this antient Author; than that this great Cause was try'd either by Tenants *in Capite*, and other great Freeholders who were all *Englishmen*, or such *Frenchmen* as were here before your Conquest. So that from this famous Trial we may draw two or three Conclusions directly contrary to your Assertions. First, That there were many great Proprietors not only in *Kent*, but in other Counties, as appears by *Eadmerus*, who were a sufficient number to try Causes in the County-Courts, a good while after your Conqueror's coming over. Secondly, That the Pleadings and Verdict in this Cause being before *Englishmen*, and given by them, must have been all in *English*; and if it were so in this Cause, it will follow for the same reason in all other Counties all over *England*. Lastly, That these Gentlemen were well skill'd in the antient Laws and Customs of *England*, which had been in vain if they had been alter'd as you suppose.

M. I will not deny but that in the beginning of the Conqueror's Reign, many *Englishmen* might have Estates left them, which might not be taken away till some Years after; and Mr. *Selden* in his Titles of Honour, places this Trial between Earl *Odo* and Archbishop *Lanfranc*, about the first Year of King *William*, and I suppose that it happen'd before the fifth Year of his Reign; when *Matthew Paris* tells us, "That the Earls *Eadwin*, *Morcar* and *Seward*, together with *Egelwin* Bishop of *Durham*, as also many thousands of Clerks and Laicks, not being able to bear the Severity of King *William*, fled into woody and desert places, and from thence got into the Isle of *Ely*, where they fortify'd themselves; and whither King *William* follow'd them, and taking the Island made them submit to Mercy." And then this Author tells us, that the King put the Bishop of *Durham* in Prison; and as for the rest, some of them he kill'd, some he put to ransom, and others he committed to perpetual Imprisonment: so that I reckon from this time, the King took away most of the *Englishmens* Estates, as not trusting them any more.

E. If this had all happen'd as you have put it, yet would it not prove what you have maintain'd: for if those *Englishmen* who had not been engag'd

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with *Harold*, or else had been pardon'd for it, still held their Estates, and as you say forfeited them afterwards for Rebellion; then it is certain King *William* did not proceed against the *English* as a Conqueror: since if he had, he would have taken away their Estates *Jure belli*; which since, as you your self confess, he did not, whatever Estates he took away afterwards, it was either for Treason committed by the *English*, or else wrongfully: if the former, he did it as a lawful King; if wrongfully, then as a Tyrant, and as such could obtain no just right against the *English* Nation by his unjust Proceedings.

But indeed after all, you are quite out in your account concerning this matter: for as to the great Trial you now mention'd, it could not be in the first or second Year of King *William's* Reign, nor could happen sooner than the sixth or seventh of his Reign; for Archbishop *Stigand* was not depos'd till the Year 1070. which was the fourth Year of King *William*; and in the next Year, being 1071. the Annals of *Mailros*, as also the Chronicle of *Thomas Wicks*, place Archbishop *Lanfranc's* Consecration, and fetching of his Pall from *Rome*: so that it could not be until the Year after this Rebellion at the soonest, when *Lanfranc* was settled in his Bishoprick, that this Suit was commenced by him against Earl *Odo*; and therefore a great many of the *English* Nobility and Gentry had still Estates left them after this Rebellion.

And that they continu'd to have so some Years after this time, appears by those Writs of King *William*, which Mr. *Atwood* hath given us in his *Janus* B. J. A. p. 42. *Anglorum*, &c. concerning the Restitution of the Lands belonging to the Church of *Ely*, which are also transcrib'd and allow'd by your Doctor in his Answer to it; and I desire you particularly to consider that Writ of King *William's* directed to Archbishop *Lanfranc*, Roger Earl of *Morton*, and *Jeoffry* Bishop of *Constance*, commanding them to cause to be assembled all those Shires who were present at the Plea had concerning the Lands of the Church of *Ely*, before the Queen went last into *Normandy*; the rest being most material to the Cause in hand, I shall give you in *Latin*: *Cum quibus etiam sint de Baronibus meis qui competenter adesse poterunt & predicto placito interfuerunt, & qui terras ejusdem Ecclesie tenent, quibus in unum congregatis eligantur plures de illis Anglis qui sciunt quo modo terre jacebant prefata Ecclesia, die qua Rex Edwardus obiit, & quod inde dixerint ibidem jurando testentur.* From whence we may also gather, that this Trial concerning the Lands which is here order'd, was to be in like manner, and by a Jury of the same sort of *Englishmen*, who try'd the Cause between Earl *Odo*, and Archbishop *Lanfranc*; that is, they were *English* Gentlemen of sufficient Estates, or Tenants in *Capite*. If you please, let us now look into the time when this happen'd, since the Writ doth not tell us when it was, only that it refers to a Plea held concerning the Church of *Ely*, before the Queen's last going into *Normandy*; so that this Trial here mention'd could not happen till after the fourteenth Year of King *William's* Reign, which I prove thus: This Queen did not come over into *England*, till the Year 1068. when the King return'd with his Queen out of *Normandy* after his Coronation, at which she was not present; after which King *William* went not into *Normandy* till the seventh Year of his Reign, when he went over and took *Mans*; and then whether he carried the Queen along with him is uncertain. But the Annals of *Waverly* tell us, he went over again the next Year, and then he might carry the Queen with him, which might be the first time she return'd into *Normandy*: but it appears by the same Annals, that the King went over the Year after; and staying but a little while, return'd into *Normandy* to fight against his rebellious Son Prince *Robert*; where staying not long, he return'd as soon as he had driven his Son out of *Normandy*. Nor do we find he went over again till the fourteenth Year of his Reign, being the Year 1080. and then I suppose since he stay'd there for some time, he carried the Queen with him; and to this last going over I suppose this Writ we have cited refers: for tho the Queen went over again after this, yet she return'd no more, because she died in *Normandy* in the Year 1083. as *Ingulph*, who was then alive, relates. The use I make of these Particulars is this, That long after the time you suppose the *English* to have lost all their Estates, we here find a great Jury of *Englishmen*, summon'd out of several Shires in *England*, to try this great Cause, concerning the Lands which the Church of *Ely* had been unjustly disseised of. So that here you see, after

the fourteenth Year of this King, the *English* still continu'd to keep their Estates, and to serve upon Juries; and consequently the Pleadings before them, as well as their Verdict, must have been in *English*.

M. I shall not insist upon this point any farther, yet this much you cannot deny, but that all the Pleadings and Proceedings at *Westminster*, as also the old Law-Books were all in *French*, as appears by the *Mirror of Justice*, and *Britton*, not to mention those of latter Days, as *Littleton's Tenures*, and others; and so were also the antient Year-Books or Reports of Cases, all written in *Norman French*, even in our own Age: so that since this proceeded from that great Alteration which the Conqueror made in our Laws, it is also a Badge of that Yoke which he imposed upon the Nation by his Conquest. And to make this yet more plain, that very Copy of King *Edward the Confessor's* Laws is in old *Norman French*, which (together with King *William's* Additions to them) *Ingulph* tells us, he brought down with him to his Monastery, and which he has inserted into his History, as you may find them in the last Edition printed at *Oxford*, and were before publish'd by Mr. *Selden* in his Notes upon *Eadmerus*.

F. I cannot deny but that some part of the matter of Fact is as you have here laid down; yet it will not follow that this common use of the *French* Tongue in our Reports and Laws, did proceed from the *Norman* Conquest, or is any Badge of Conquest: For first, the most antient Laws of King *William*, which we find in *Spelman* and *Lambert's* Collections, are in *Latin*, as they were before the pretended Conquest. I grant indeed those you mention in *Ingulph* are in *French*, but they being most of them Criminal or Penal Laws, or else concerning Tenures, it is no wonder they were publish'd in the Language of his Country, that the *Normans* and other *Frenchmen* he brought over with him might understand them; and tho they were written in *French*, yet they were proclaimed in the *English* Tongue, that the *English* as well as *Normans* might take notice of them. But after these Laws, you will not find any antient Charter or Statute in *French*, till the Statute of *Westm. I.* which was above 200 Years after your pretended Conquest; for all the Charters of this King *William* are in *Latin* or *Saxon*, as that particularly granted by him to the City of *London*; so likewise were all the antient Charters and Laws of the other succeeding Kings, as those of King *William Rufus*, *Henry I.* *Henry II.* King *Stephen*, and *Richard I.* in *Latin* or *Saxon*, and none of them in *French*, as appears by several of them still to be seen in the Archbishop's Library at *Lambeth*, and in Sir *Robert Cotton's*, and also *Magna Charta*, and all other Statutes and Charters of King *John*, and *Henry III.* till the Statute of *Westm. I.* above mention'd: and therefore it is not likely that this Custom should have taken its original from *Normandy*; for if it had, it would have been begun immediately after your Conquest. And as for our Law-Books, tho I grant those you mention'd to be written in *French*, yet is it not the *Norman French*, since it differs very much from the Language in which King *Edward's* Laws are written, which are in *Ingulph*, the *French* of which is so obsolete and obscure, that he that understands our Law-*French* very well, can scarcely make any sense of them; but our first Writers concerning the Laws of *England*, writ in *Latin*, and not in *French*, as you may see by *Glanvil*, *Bracton* and *Fleta*, who writ before *Horn's* *Mirror of Justice*, or *Britton's* Treatise of the Laws of *England*.

As for your Books and Reports, I grant they are in *French*; but that this Custom was not deriv'd from *Normandy*, is also certain, since the first Reports we have begin with the first Year of *Edward II.* except some few Memorandums of Cases adjudg'd in the Exchequer in the Reign of his Father, above 200 Years after King *William's* coming in (as I but now noted;) nor could they be writ in the *Norman* Dialect, since we had then nothing to do in that Dutchy, which had been conquered by the *French* in the beginning of King *John's* Reign, above eighty Years before any Report or Law-Book was writ in *French* at all: and therefore we must ascribe the original of this Custom to some other Cause than the mere Will and Pleasure of your Conqueror, and for this we must go as high as the Reign of King *Edward the Confessor*; who, as *Ingulph* tells us, "having lived long in *Normandy*, and bringing over divers *Normans* with him, the whole Nation began under this King to forsake the *English* Customs, and to imitate the *French* Manners in many things, so that all great Men looked

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“ upon it as a piece of good Breeding, to speak *French* in their Houses, and
 “ to make their Deeds and Charters after the *French* manner: so that it was very
 “ easy for King *William* after his coming in, who (as *Ingulph* also tells us) ab- 1b. p. 71.
 “ hor’d the *English* Tongue, to make the Laws of the Land to be pleaded in
 “ the *French* Tongue, and to make the Boys to learn at School the first Rudi-
 “ ments of their Grammar in *French*; and also the *Saxon* or *English* Hand to be
 “ alter’d, and the *French* Hand to come in use in all Books and Writings.”
 And tho I confess most of the Chief Justices and Judges were *Frenchmen* or *Normans*, during the three or four first Kings of that Race; yet that alone could not have caused this Tongue to be so generally used, not only in the King’s-Court, but also in all the Courts at *Westminster*, after *Englishmen* began again to sit there, had it not been for the tacit Consent not only of the King, and People of Quality, but also of the Lawyers themselves: for the Law-Terms being for the most part *French*, they did not only thereby make the Law the greater mystery to the Vulgar, but they also supposed that these Terms being *French*, could not be rendred into any other Language. Yet for all that, it had been impossible for this Tongue, which was spoke by so small a number of Persons in respect of the whole Nation, to have prevailed so long among the better sort of People; had not our Kings for many Ages enjoy’d large Territories in *France*, which occasioning their frequent going over thither about Affairs of War or Peace, as also the *French* Gentry and Nobility’s frequent coming over hither, it is no wonder if that Tongue being the Language of the Court, was generally understood and spoken by all Noblemen, Gentlemen and Lawyers. So that I have heard it from a very good Hand, a Person who is well versed in Antiquity, that a Gentleman being returned on a Jury in the Reign of *Edward II.* was excepted against, because he did not understand *French*; and hence it is, that not only the Terms of our Law, but also those of Heraldry, Hawking and Hunting, are almost all *French* to this day: and tho by the Statute of *Edward III.* which you but now mention’d, all Pleas should be in *English*, and not in *French*; yet I desire you to take notice, that this did no way extend to any matters of Process upon which Suits are founded; but that the Writs, Declarations, and all other matters of Record were always entered and enrolled in *Latin*, from before the Conquest to this very Day, so that there was never any Alteration as to that point. These things being consider’d, it is no wonder if the Judges and Clerks of Parliament, who were in those Days entrusted with the drawing up of all Acts of Parliament, being greater Masters of the *French* than *Latin* Tongues, chose rather to draw them up in the former: and thus it continu’d until the Reign of *Henry VII.* when our Statutes began first to be drawn up, and enrolled in *English*.

M. I confess you have given me a greater light in this matter than I had before; yet I suppose you cannot deny that the Tenure of Knights-Service, with those clogs that belong to it of Wardship, Marriage, and Relief, were all derived from the *Normans*, as appears by the grand Custom of *Normandy*, which I have already mention’d: so that tho it be true that all these are now taken away by a late Statute of King *Charles II.* yet since this Tenure, and those Services are not found among the *Saxon* Laws, there cannot be a greater Proof of the antient Power of the Conqueror, or of the Servitude imposed upon the Nation by him; and therefore I look upon it as a very imprudent part of the late King *Charles*, to part with so great a tie, which his Father and all his Predecessors had over the Persons and Estates of all the Nobility and Gentry of the Kingdom.

F. I shall not take upon me to decide whether it were politickly done or not of King *Charles II.* to part with the Wardship, and Services of his Tenants by Knights-Service; but this much is certain, that considering the Abuses and Corruptions that had crept into that Tenure by degrees, since the first Institution, both by the unfit Marriages of the Heirs, as also by the waste that was often-times committed on the Ward’s Estate during his Minority, it was certainly a very great grievance and burden to the Subject; and considering how many of those Wardships were begged by hungry Courtiers, they were of no considerable profit to the Crown: and tho I grant they were a very great tie (or rather clog) upon the Estates of the Nobility and Gentry of this Kingdom, yet it did not thereby produce any such Love or Obedience, as would retain
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the Tenants better in their Duty before than since they were granted away. For the Forfeitures for Treason and Felony, and also Fines for Alienations, are reserved to the Crown now as they were before; and as for any love or respect which was antiently paid by the Heir, how could there be any such thing? since the King granted away the Custody of the Heir, and his Lands, to Persons who for the most part made a mere Prey of them; so that they were often married against their Consents, and their Estates were delivered to them wasted and spoiled: besides also what was exacted from them for Reliefs, and *Oufterlesmaines*, we need not wonder if it were rather a Cause of secret discontent and hatred of the King's Prerogative than otherwise. And therefore I cannot think it was so unpolitickly done by the King, to render himself gracious and acceptable to his People upon his return to grant their Request, and pass that Act for taking away Wards and Liveries, and to accept of a Revenue by Excise of treble the Value instead of it.

Cap. 69.

But to come to the Original of Knights-Service it self, I do not think it was deriv'd from the *Normans*, since we are certain there were Thane-Lands in *England* which were held of the King, and that by Knights Service, before King *William's* coming over, and there were also middle Thanes who held of those Lords above them by the like Service; infomuch, that in the Laws of King *Knute* there is one concerning the Heriots, which an Earl, the King's Thane, as well as inferior Thanes, were to pay not only to the King, but to other inferior Lords; which are almost the same as were afterwards reserv'd by the Laws of King *Edward* the Confessor, confirm'd by King *William*, as you would find them in *Ingulph*; only there is no Gold reserved, but only Horses and Arms: whereas by the Law of *Knute*, each Earl was to pay two hundred Manenses of Gold, each King's Thane fifty, and each inferior Thane two Pounds. Only note, that he who is call'd Earl in King *Knute's* Laws, is call'd a Count in these; the Thane a Baron, and the inferior Thane a Vavasor; and that which is there call'd a Heriot, is here termed a Relief.

Cap. 35. p. 192.

And that this Tenure by Knights Service, which is now call'd *Escuage* or *Servitium Scuti*, was of antient time nam'd *expeditio hominum cum scutis*, and was in use before the coming in of the *Danes*, is also as certain: for Sir *E. Coke* in his fourth *Inst.* tells us of the Charter of King *Kenulph*, who *Anno Domini* 821. granted to the Abbot of *Abingdon* many Mannors and Lands; and reserved, *quod expeditionem duodecim virorum cum tantis scutis exerceant, antiquos pontes & arces renovent*. And also he mentions a like Charter of King *Ethelred* to a Knight call'd *Athelweg*, *Anno Domini* 995. So that you see not only spiritual Persons, and great Thanes or Barons; but also Knights held Lands by the Service of so many Men before your Conqueror, and your Doctor also himself allows it; for in his Answer to Mr. *P.* in all antient Charters in the *Saxon* times he translates the word *Fideles* by Tenants in *Capite*, or Military Service.

Pag. 3.

M. I will not deny that Military Fees were in use before the Conquest, and also that the feudal Law did obtain here in many things; and therefore I am so far of the Doctor's Opinion, who in his *Glossary*, Tit. *Feudal Laws*, tells us; "The feudal Law obtain'd in most Nations of *Europe*, and in *Normandy* was in its full Vigour at the time of the coming over of the Conqueror, but afterwards grew more mild and qualify'd, as also the Tenure it self; a perfect Description of which, with all its incidents of Homage, Relief, Ward, Marriage, *Escuage*, *Ayds*, &c. are to be found in the Grand-Customer, Cap. 29, 33, 34, 35. And altho there were Military Fiefs, or Fees, here in the *Saxon* times, yet not in such manner as after the Conquest establish'd here by *William* the Conqueror, and according to the usage in *Normandy*; whenas it appears by *Doomsday-Book*, in every County he divided most, if not all the Land of *England*, amongst his *Normans* and Followers." Now that this Custom of Wardships is wholly derived from the *Norman* Conquest, you shall find in Sir *Edw. Coke's* fourth *Inst.* in the same Chapter you last cited, as you may here read: "You have heard before *de regali servitio*, before the Conquest; but that *regale servitium* (which was Knights Service) drew unto it Relief, but neither Wardship of the Body or of the Land, as hath been said. It is true, that the Conqueror, in respect of that Royal Service, as a badge of the Conquest, took the Wardship of the Land, and the Marriage of the Heirs within Age of such Tenants; but this extended not to the Tenures of

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“ the Subjects by Knights Service, as it appeareth by *Bracton*, *Dicitur Regale servitium, quia spectat ad dominum Regem & non alium, & secundum quod in Conquestu fuit adinventum, &c.*” Whereupon Sir E. C. notes (in the Margent) this Tenure (as before it appeareth) was not then invented, but the Fruits of this Tenure of the King, viz. Wardship and Marriage, (which was *Bracton*’s meaning) these the Conqueror reserved for himself; but other Lords at the first by special Reservation, since the Conquest, reserved gifts of Lands for themselves; *Regis ad exemplum totus componitur orbis*: wherein that which we had from the Conqueror we freely confess.

F. I shall not dispute this matter, since it is doubtful whether this Custom of Wardship was *Norman*, or whether it was deriv’d from the *Saxons*, who possibly might have some respect to Orphans in such Cases, to train them up for the publick Service in point of War; especially being possessors of a known right of Relief. Thus *Alfred* the *Saxon* King did undertake this Work for the training of some particular Persons in Learning, for the Service of the Publick in time of Peace, and Civil Government: and tho Sir *H. Spelman* is of opinion in his Title *de Wardis*, that Wardship of the Heir came in with the Conqueror; yet Sir *John* his Son, (who was also a Learned Antiquary) in his Epilogue to his second Book of King *Alfred*’s Life, printed at *Oxford*, speaking of Military Fees granted to the King’s Thanes, has this Passage. *Hæc etiam Feoda hereditibus sub Hereoti, sive relevaminis cujuspiam quod heres in terra redemptionem Regi solvere tenebatur, conditione plerumque transibat; & si heres minor natu à Patre moriente relinquebatur, Regi educatio ejus (utpote Regis Hominis) committebatur, in utilitatem etiam & commodum ipsius Regis.* But whether the Wardship of the Body of the Heir, was in use in King *William*’s time or before, is uncertain; for the Land is in the Charter of *Henry* the first in *Mat. Paris*, granted either to the Widow or next Heir.

But let these Customs be deriv’d from whence you please, it is a plain Case it could be no badge of Conquest upon the People of this Nation, and that by the Doctor’s own shewing; for were it a *Norman* Custom ever so much, if your Conqueror first of all imposed it upon those he brought over along with him, it could never be a Badge of Slavery upon the *English* Nation, but rather upon the *Normans*, upon whom it was chiefly imposed: and if they afterwards granted Lands to the *English* upon the same Terms they held them themselves, they were no more Slaves to whom they were granted, than they were under whom they held them. But indeed this was so far from being look’d upon as any badge of Servitude, that if the Doctor himself is to be believ’d, “ These were the only Freemen, and their Services (*Bracton* says) were so notoriously free, that in Writs of Right it was never mention’d, because so well known; *Notandum in servitio Militari non dicitur per liberum servitium, & ideo quod constat, quia tale Servitium liberum est.*” And however rigorous the feudal Law might be at the beginning, it was when your Conqueror came in so far mitigated as to the rigour of it, that the Tenants by Knight Service were not only free by King *William*’s Law, from all arbitrary Taxes and Tallies, but also obtained a settled Inheritance to them and their Heirs, as appears by that Clause in King *William*’s Charter already mention’d; and therefore in the Reign of *Henry* III. when *William* of *Warren* Earl of *Surrey* was question’d after the Statute of *Quo Warranto* by the King’s Justices, by what Warrant he held his Lands, pulling out an old Sword, he answer’d to this Effect: “ Behold, my Lords, here is my Warranty, my Ancestors came into this Land with *William* the Bastard, and obtained those Lands by the Sword, and I am resolv’d with this Sword to defend them against any whosoever shall go about to dispossess me; for the King did not himself alone conquer the Land, but our Progenitors were Sharers with him and Assistants therein.”

As for what you say, That the Laws in the Customary of *Normandy*, are the same with the Laws of *England*; it is no more than what divers *French* Writers have taken notice of, but do not attribute their Agreement to their being borrow’d from the *Normans*, but quite contrary: for in the first place most of the Learned Men say, That the first establishing of the Customary of *Normandy*, was in *Henry* I’s. time, and afterwards again about the beginning of *Edward* II’s time, when *Normandy* was not under the King of *England*. And *Sequerius* a *French* Author relates, that King *Henry* I. establish’d the *English*

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Glossary. Tit. liberi homines.

Vid. An ancient MS. in the Bodleian Library, cited by Sir Will. Dugdale in his Baronage of England, p. 79.

Vid. Mr. Whitlock’s speech in Parliament, 1650. printed in his Memorials, pag. 451.

Laws

Vid. Coke's
Preface to his
Reports.

Laws in *Normandy*, and with him do also agree *Gulielmus Brito, Rutelarius*, and other *French* Writers, who mention also that the Laws in the Customary of *Normandy* are the same with the Laws collected by our *English* King *Edward* the Confessor: an additional Testimony hereof is out of *William de Ruville de Alençon*, who in his *Latin* Comment upon the Customary, proves and demonstrates that the Laws and Customs of *Normandy* came from the *English* Laws and Nation, either not long before or after *Edward* the Confessor's time.

In the *Norman* Customary, there is a Chapter of *Nampes* or *Distresses*; and it is there decreed, that one should not bring his Action upon any Seizure, but from the time of the Coronation of King *Richard*, and this must be our King *Richard I.* because no King of *France* was ever of that Name; and the words *Nampes* and *Withernams* were *Saxon* words, taken out of the *English* Laws, signifying a Pawn or Distress, and in the same sense are used in the Customary. But if you have nothing more to object against what I have now said, pray proceed to your last Head, and let me see how you will prove, that the *English* lost all their antient Liberties and Privileges which they enjoy'd under the *English* *Saxon* Kings.

M. I never heard so much before concerning the original Use of the *French* Tongue in our Reports and Law-Books, but yet this much I think you will not deny: First, that the *Norman French* was never used in our Courts of Justice, till after the Conqueror's Entrance. Secondly, That he did his endeavour totally to root out the *English* Tongue, by ordering all Children to learn the first Rudiments of their Grammar in *French*; and as for what you have said concerning the Customary of *Normandy* being especially as to Tenures derived from the *English* Laws and Customs, I do not deny, but that it may be the opinion of some *French* Writers that it was so: but I shall believe it, when they can prove that the Wardships and Marriage of the Heir of the Tenants by Knights Service, as also those Aids they were to pay the King, or any other Lord they held of, towards making his eldest Son a Knight, and marrying his eldest Daughter, were in use in *England* before the Conqueror came over.

But to observe your Commands, I shall now proceed to shew that by the Conquest, the *English* for a long time lost all their antient Rights and Privileges, till they again obtained them either by their mixing with the *Normans*, so that all distinction between them and the *English* were taken away, or else they were restor'd by the Charters of King *Henry I.* King *John*, and King *Henry III.* I shall therefore divide the Privileges of *Englishmen* into these three Heads: First, Either such as concerned their Offices or Dignities: Or, Secondly, Such as concerned their Estates: Or lastly, Such as concern'd the Trial for their Lives: in every one of which, if I can prove the *English* Natives, as well of the Clergy as Nobility, suffered considerable Losses and Abridgments of their antient Rights and Liberties which they formerly enjoy'd, I think I shall sufficiently prove the point in hand. As to the first Head, *Ingulph* tells us,

Pag. 70, 71.
Edit. Oxon.

"That the *English* were so hated by the *Normans* in his time, that how well soever they deserv'd, they were driven from their Dignities; and Strangers, tho much less fit, of any Nation under Heaven were taken in their places." And *Malmesbury* who liv'd and writ in the time of *Henry I.* says,

Pag. 93.

"That *England* was then become the Habitation of Foreigners, and the Rule and Government of Strangers; and that there was at that day no *Englishman* an Earl, Bishop, or Abbot; but that Strangers devoured the Riches, and gnawed the Bowels of *England*, neither is there any hope of ending this Misery." So that it is plain they were now totally depriv'd of all Offices and Dignities in the Common-Weal, and consequently could have then no place in the Great-Council, the Parliament of the Nation, both for the raising of Taxes, and the making of Laws. And tho I grant Mr. *Petyt* and your self suppose you

B. A. P. p. 36.

found a Clause in the Conqueror's *Magna Charta*, whereby you would prove, that all the Freemen of this Kingdom should hold their Lands and Possessions well and in peace, free from all unjust Exactions and Taillage, so as nothing be exacted or taken unless free Services, which of right they ought and are bound to perform to us; and as it was appointed to them, and given and granted to them by us as a perpetual Right of Inheritance, by the Common-Council of the

the whole Kingdom; yet this Common-Council will not help you, for without doubt here were no *Englishmen* in it; for certainly they would not grant away their own Lands to Strangers. These were the *Saxon* Lands which *William* had given in Fee to his Soldiers, to hold them under such Services as he had appointed them, and that by right of Succession or Inheritance.

We will now come to the second point, viz. the Privileges the *Englishmen* lost as to their Estates: for whereas before the Conquest you affirm, the King could not make Laws, nor raise Taxes without the Common-Council of the Kingdom; it is certain King *William*, and his immediate Successors, did by their sole Authority exercise both these Prerogatives. As for his Legislative Power, it appears from the words of his Coronation-Oath, (as you your self have repeated it out of *Florence of Worcester*, and *Roger Hoveden*) the Conclusion of which Oath is; *se velle rectam legem statuere & tenere, Rapinas injustaque Judicia penitus interdicere*. Now the Legislative Power was then lodg'd in him, why else did he swear to appoint right Laws? For if the Constitution had been settled as it is at present, the Parliament could have hinder'd him from making any other; and that he could do so, appears by that Yoke of Servitude, which *Matthew Paris* (as well as other Authors) tells us, "King *William* by his own Authority imposed upon the Bishopricks and Abbies in *England* which held Baronies, which they had hitherto enjoyed free from all secular Servitude: he now, says he, put them under Military Service, selling all those Bishopricks and Abbies, according to his Pleasure, how many Knights or Soldiers each of them should find to the King and his Successors: And putting the Rolls of this Ecclesiastical Service in his Treasury, he caused to fly out of the Kingdom many Ecclesiasticks who opposed this wicked Constitution." Now if he could do this upon so powerful a Body, as the Bishops and Abbots were at this time, he might certainly as well raise what Taxes he pleased upon all the People of *England*; and therefore *Henry of Huntington* tells us, that King *William* upon his return out of *Normandy* into *England*, *Anglis importabile tributum imposuit*. Lib. 3. p. 278. And that his Son *William Rufus* imposed what Taxes he would upon the People, without consent of the Parliament, appears by that Passage of *William of Malmesbury*, which he relates in the Reign of this King, as also in his third Book *de Gestis Pontificum*, concerning *Ranulf*, whom from a very mean Clerk he made Bishop of *Durham*, and Lord Treasurer: the rest I will give you in *Latin*; *Iste, si quando edictum regium processisset ut nominatum tributum Anglia penderet, duplum adjiciebat, subinde ridente Rege ac dicente solum esse hominem, qui sciret sic agitare ingenium; nec aliorum curaret odium, dummodo complaceret dominum*. So that you may here see that the King's Edict or Proclamation did not only impose the Tax at his pleasure, but his Treasurer could double it when he had a mind to it, without Consent of the great Council or Parliament, as we now call it: and this Prerogative was exercised by divers of his Successors, till the Statute *de Tallagio non concedendo* was made.

But to come to the last Head concerning the alteration of Trials for Mens Lives and Estates by the Conqueror, from what they were before; it is certain that whereas before the Conquest there were no other Trials for Mens Lives but by Juries, or else by Fire or Water Ordeal, which was brought in by the *Danes*; the Conqueror tho he did not take away these, yet also added the Law then in use in *Normandy*, of trying not only Criminal but Civil Causes by Duel or Combat: all the difference was, that in Criminal Cases where there was no other Proof, the Accuser and Accused fought with their Swords, and the Party vanquished was to lose his Eyes and Stones; but in Civil Causes they only fought with Bastoons headed with Horn and Bucklers, and he or his Champion who was overcome lost the Land that was contended for. From whence you may take notice also of a great alteration in the Law, not only concerning Trials, but capital Punishments: so that before the Conquest, all Crimes, even Manlaughter it self, were fineable according to the Quality of the Person, and the Rates set upon each Man's Weregyld, or price of his Head, as you will find them set by the Laws of King *Athelstan*; after that time instead of Fines, capital or corporal Punishments became chiefly in use.

I shall not insist much upon divers lesser Things, which King *William* as a Conqueror imposed on the People of *England*; as disarming them of all offensive Weapons, forbidding them to hunt or kill any Deer in his Chases or Forests,

rests, under the Penalty of loss of Eyes and Members, as also keeping up and reinforcing the antient Laws of Decenaries or Tythings, whereby every ten Families were bound with their tenth Man or Tythingman, Body for Body, of each others good abearance; as also that Law forbidding all sitting up late at Night, or Assemblies after eight of the Clock, but that every one should go to Bed, and put out both Fire and Candle at the ringing of the Coverfeu Bell; these things I think are very sufficient to prove that King *William* as a Conqueror did very much abridge, and in some things wholly take away the antient Privileges and Liberties of the *English* Nobility, Clergy and Commons, and did also make many and great Alterations, not only in the Forms of Pleadings, but also in the very Substance of our Laws, both Criminal and Civil: and if he did not make more Alterations of this kind, it was wholly owing to his free Will and Pleasure; since, as *Eadmerus* tells us, he ordered all Divine and Secular things according to his Pleasure.

F. That I may the better answer what you have said, I shall partly grant, and partly deny the matters of Fact you have alledged; and also further prove that if they had been all as you have laid them, yet would not they prove your Conclusion, That King *William* by his own Arbitrary and Tyrannical Actions could create any Right by Conquest, either to himself or to his Successors. And therefore to begin with your first Head, *viz.* the Privileges of the *English* Nobility as to Offices and Dignities, tho I grant it was true, as the Authors you have cited relate, that scarce any *Englishman* was, when they writ, either a Bishop, Earl or Abbot, yet this is to be understood only of the latter end, and not the beginning of his Reign: for as to the Bishops and Abbots, I do not read of any more than *Stigand* Archbishop of *Canterbury*, and *Egelric* Bishop of *Durham*, who being depriv'd of their Bishopricks, had Successors put into their rooms in their Life-times; and yet in the place of this last, not any *Norman*, but one *Walcher* an *Englishman* was named by the King to succeed. And as for the Earls, of all those who had been against him and opposed his coming in, there was not one but he received into favour, and continued in his Dignity and Estate, as in particular the Earls *Eadwin* and *Morchar* Brothers, together with *Waltheof* and *Simard*, and *Edgar Atheling*, whom they had named King of *England*, who all kept their Earldoms and Estates till terrified by the King's severe and tyrannical Proceedings; the three first of these fled away as you have already shewn: tho I confess Prince *Edgar* had for two or three Years before this, fled into *Scotland*; but yet was afterwards restor'd to the King's Favour and his Estate. Nor do I find any considerable Alteration in the King's manner of disposing of his Honours or Preferments, either Ecclesiastical or Civil, till Earl *Waltheof* was convicted of being in the Plot, with *Ralph de Waler* Earl of *Norfolk*, and other Lords, as well *English* as *Normans*, to expel King *William*; and from that time (being the eighth Year of his Reign) I grant he changed his whole course of Government, and put no more *Englishmen* into any Places of Honour or Profit: tho *W. Malmesbury* endeavours to excuse the King's Severity in these words, *Inde propositum regis fortassis merito excusatur, si aliquando durior in Anglos fuerit, quod penè nullum eorum fidelem invenerit*: tho with this Author's good leave, the King had been the cause of this Conspiracy, by his own Tyranny and Breach of Oaths, as I shall shew you by and by.

So that either this King was mov'd by just Provocations thus to debar all *Englishmen* from being prefer'd to Dignities or Offices, or he was not; if the former, and that he had just cause so to do, it was no more than what any other foreign Prince who had no Hereditary Right to the Crown, would have done in the like Case: But if the latter, it was not only contrary to Justice, but also to his own Coronation-Oath, one Clause of which, as *Malmesbury* shews us in his *de Gestis Pontificum*, was, *quod se modeste erga subditos ageret, & a quo jure Anglos & Francos tractaret*. So that this King's arbitrary and violent Proceedings, after he had for some time govern'd as a lawful King, tho they might prove him a Tyrant, yet they could by no means make him a Conqueror. And as for the latter part of your Argument, whereby you would prove that in his Reign there were no *Englishmen* in the great Councils of the Kingdom, that can only be understood (in the strictest sense) of the times after the great Conspiracy I have now mention'd; for before, it is very evident that there were many

Bishops,

Bishops, Earls and Barons still left, who must have been Members of the Great Council. Nor can you prove that the Law I have mention'd against the King's taking the Tallage or Taxes without their Consent, was made after that time; but let it be made when it will, you shall never persuade me it was enacted without any *Englishmen* being present, till you can prove to me that there were no *English* Tenants *in Capite* towards the end of his Reign, and that there were then no Knights, Citizens or Burgeses that represented the Commons in the Great Council; and can give a better answer to those Arguments I have given you to prove they were there; especially that remarkable Clause in the Conclusion of this King's Charter, to the Abbey of *Westminster*, which mentions divers principal Persons, both of the Clergy and Laity, to have been summon'd to that famous Synod or Great Council, when this Charter was granted.

I come now to your next Head, whereby you would prove this King's Abridgment of *English* Privileges, as to their Estates and Properties, to begin with that of the Legislative Power; which, as you say, was then wholly in the King. Admit it were so, it will not prove that for which you urge it, *viz.* that it is a sign of the King's Absolute Conquest over the *English*: for if the Great Council of the Kingdom had then lost its antient Right, it was his *Normans* and *Frenchmen*, as well as the *English*, that he bereaved of their antient Privilege, of giving their Consent to Laws; since it is very certain that neither the King of *France*, nor the Duke of *Normandy* could at that time make any Laws without the Consent of their Estates.

But the Truth is, that your Conqueror could not do it; for if the *Normans* he brought over with him, had, as you suppose, the greatest share of all the Lands in *England*, they would have been too powerful a Body of Men to be thus made Slaves at his pleasure. Indeed his own Laws shew the contrary, for in that very Law it appears otherwise: "Whereby all the Freemen of *L. L. Guil. 55.*
 " the Kingdom were to hold their Lands and Possessions free from all unjust
 " Exactions and Tallage, and that nothing should be exacted of them, but
 " their free Service, which they were bound to do according as it is appointed
 " them by the King, and it is granted them by an Hereditary Right for ever,
 " by the Common-Council of the whole Kingdom." Whereby you may see that they had their Lands and Liberties granted them, for an Hereditary Right, not only by the King, but by the Common-Council of the Kingdom, and that the King could not alter King *Edward's* Laws without their Consent. The Charter of King *Henry I.* says expressly; *Legem Regis Edwardi vobis reddo, cum illis emendationibus quibus Pater eam emendavit Concilio Baronum suorum.* Therefore as for that Authority you have brought out of *H. Huntington*, that upon this King's return from *Normandy*, he impos'd a heavy Tax upon the *English*; this is either to be understood of such a Tax as they gave him voluntarily, tho perhaps they durst not do otherwise, as the States of *Provence* and *Languedoc* are fain to do to the King of *France* at this day, when he requires it; and yet he does not claim those Countries by right of Conquest: Or if King *William* impos'd this Tribute without their Consents, it was not only contrary to the Law just now mention'd, but also to his own Coronation-Oath, whereby he swore to prohibit all unjust Rapines, and that he should behave himself equitably towards his Subjects; with which, certainly his taking away their Money without their Consents, would by no means consist. But to answer that part of the Coronation-Oath which you think makes most for you, that whereby he swore only to make right Laws, which must have suppos'd the Power to have been in himself, because the Parliament might have hindered him from doing otherwise; this is but a Caviel, for it is already prov'd that he was to make Laws, and raise Taxes by the Common-Council of the Kingdom: and therefore these words may very well bear another Sense, and do only give the King a Negative Voice of passing such Laws as the Great Council should offer to him, or else such as he might propose to them for their Consent. And I suppose you will not deny but that it is very possible, that either the King or the Parliament may propose such Laws as may not seem equitable, or just; and then certainly both the one and the other have a negative Vote, and ought not to give their Consents to them.

But to answer your last Instance, whereby you would prove that this King as a Conqueror impos'd what Taxes and Services he pleased; not only upon the

Laity, but the Clergy too; by making the Bishopricks, and greater Abbies liable to Knights Service, which you suppose to have been done by his sole Authority, without any Consent of the Common-Council of the Kingdom: this is only *gratis dictum*, and is indeed altogether improbable. For if the King had done this by his sole Power, he would have impos'd this Service upon all the Abbies in *England*, whose Lands might have been as well reduc'd to Knights Fees, as those that were put under that Service; and so might have been forc'd to find as many Soldiers as they had Fees, as well as the Bishopricks and greater Abbies. But indeed the Clergy were too powerful a Body to be thus arbitrarily impos'd upon, and they would soon have complain'd to the Pope against the King for this new Servitude he had impos'd upon them; and therefore I think we may with much more safety conclude with Mr. Selden in his Titles of Honour, that this Imposition of Knights Service upon the Bishopricks and Abbies, was done by the Common-Council of the Kingdom, it being too great a matter to be done without it. For it appears by *Eadmerus*, that the King held a Council this very Year, tho the Laws and Proceedings of it are all lost; and this is the more likely to be so, because this Imposition was not laid upon all the Abbies in *England*, but only upon the Bishopricks, and such Abbies as were of Royal Foundation, and held immediately of the King before your Conquest, and were only such as enjoyed whole Baronies; as *Mat. Paris* there tells us.

I shall now come to your last Head, whereby you would prove that your Conqueror, by his sole Power, alter'd the Course of Trials, and introduc'd the Custom of Duel or single Combat, in Civil as well as Criminal Causes. The chief Argument you have for this, is, that there is no mention made of this Trial by Duel in our *English Saxon* Laws before the Conquest: which is but a negative Argument at the best; and you can shew me no antient Author that says expressly that King *William* introduc'd it: and tho I grant it is first mention'd in his Laws, yet does it not therefore prove that it was not here before, since it was certainly in use among the *Franks* and *Longobards*, who were *German* Nations as well as the *Saxons*. But admit it were first introduc'd by the Conqueror, this was no Badge of Conquest, for the *Normans* as well as the *English* were subject to this Trial, which was in use in *France* and *Normandy* long before this King's coming in: so that admit he first establish'd it here, it might not have been done by his sole Power, but by some Law made in the Great Council of the Kingdom, tho it be now lost; as we have very few of the Laws that were made by this King now left us, besides those which are called the Laws of King *Edward*, with this King's alteration of them: all which was certainly done in the Common-Council. The like I may say concerning the alteration of Punishment for Deer-stealing and other Crimes, which were either punishable by pecuniary Mulcts, or else by Death, before the coming in of the *Normans*; since those Alterations might be also made by the Consent of the Great Council: but that the same Forest-Laws were in use before the Conquest as after, you may see in the Forest-Laws of King *Knute*, as you will find in Sir *H. Spelman's Glossary*, Title *Foresta*; only the Punishments are there Pecuniary, or else Loss of Liberty, which after your Conquest was changed into the Loss of Eyes and Members.

But as for other lesser matters, as his disarming the *English*, and forbidding Night-Meetings, if these things were done (as I do not find any express Law for them, for there is no such thing mention'd in the Law *de nocturnis Custodiis*) they were practis'd by this King for his own Security, after the *English* had by their frequent Insurrections made him use all the means he could to prevent it for the future; so that at the most they were but temporary Constitutions, and did not last long: nor could this Law of the Coverfeu-Bell be any Badge of Slavery on the *English*, since we find the same Custom to have been us'd in *Scotland*, which you will not say is a conquer'd Nation; nor do I find the *Normans* after they came over, were any more exempted from this Law than the *English* Natives. But I much wonder you should reckon the Laws of Decenaries or Tythings, among the Badges of *Norman* Slavery; since if you have read any thing in our *Saxon* Laws, you will find, as *Ingulph* tells us, that King *Alfred* first appointed, *ut omnis indigena legalis, in aliqua Centuria & Decima existerit, & si quis suspectus de aliquo latrocinio per suam Centuriam vel Decuriam*

condemnatus, pœnam demeritam incurreret. So that whatever other Laws you find, either of our *Saxon* or *Danish* Kings, or else among those of King *William*, concerning *Triburghs* and *Tythings*, it was only to confirm or reinforce this antient Constitution. But that not only the meanest sort of *Freemen*, but the greatest and best *Nobility* and *Gentry* were subject to this Law of *Tythings*, may appear by that Law I have already quoted of King *Knute*, whereby every *Freeholder* was “to have his Family in his Pledg, that is, was “bound to answer for them to the King; and if he were accused to have let “them run away by his Consent, he was to purge himself by his own Oath, “and also the Oaths of five other *Thanes*, that he was innocent.” So likewise the Laws of King *Edward*, confirmed by King *William*, are very particular on this Subject, “That all *Archbishops*, *Bishops*, *Earls*, and *Barons*, *Vid. Hoveden.* “should keep their *Knights* and *Servants* there mentioned in their *Frithborg*, “that is, in their *Franc Pledg*, whereof the *Lords* themselves were to be the “*Sureties*, as appears by what follows, *viz.* that if any of them offended, “their *Lords* should be obliged to do Right in their Courts.” And to the same purpose is the 49th Law in *Ingulph’s* Copy of these Laws; the words are these: *Echascun Senior ait sun seriant u sun plege, que sinele rete que ait a dreit el Hundred*; that is, that every Lord keep his *Servant* in his *Pledg*, that if he offend, Right may be done in the *Hundred*.

So that upon the whole matter, I can see nothing considerable imposed by your Conqueror upon the free-born *English* Subjects, which they were not tied to before the Conquest, or which did not reach all the *Normans* he brought over with him, as well as they.

M. I do confess I did not believe there was so much to be said to prove that *William* the Conqueror never altered the Law of *England*, in any of its material Parts: but since you have gone thus far, pray proceed to shew me, that he any ways confirmed all the Laws of the *Saxon* Kings his Predecessors; since, I conceive, as a Conqueror, he might justly have vacated what of them he would, and I do not see any thing in his Coronation-Oath that could have hindered him from it.

F. I doubt not but to give you very good satisfaction in this Point: for not only your Conqueror’s Will was never declared, that the former Laws should be abrogated, and till such Declaration all Laws ought to remain in force, even in the Conquest of *Christians* against *Christians*, according to *Sir Edw. Coke’s* *Page 17.* Opinion in *Calvin’s* Case; but indeed the antient and former Laws of the Kingdom were so far from being abrogated, that they were all confirmed by him. For in his fourth year, by the Advice of his *Baronage*, he summoned to *London*, as the words are in the Book of *Litchfield*, *Omnes Nobiles, Sapientes, & Lege suâ eruditos, ut eorum Leges & Consuetudines audiret*: Or as *Hoveden* relates it out of a Collection of Laws written by *Glanvil*, *Fecit summoniri per universos consulates Angliæ, Anglos Nobiles, & Sapientes, &c.* And twelve were returned out of every County, who shewed what the Customs of the Kingdom were, which (as *Mr. Selden* tells us in his History of *Tythes*) being written by the hands of *Aldrid* *Archbishop* of *York*, and *Hugo* *Bishop* of *London*, were, with the request of the same *Barons*, confirmed in that Assembly, which was a *Parliament* of that time. And then in *Hoveden* follow the Laws of *Edward* the Confessor, so confirmed by King *William*, among which is that Law concerning the Office of a King, which I have now given you: And before this, at the very beginning of his Reign, he also confirmed the Privileges of the City of *London*, as appears by his Charter in *Saxon*, which is to be seen at this day; which is also confirmed by *Ordoricus Vitalis*: *Gulielmus Rex multa Lundonia postquam coronatus est, prudenter, justè, clementerque disposuit quadam ad ipsius Civitatis commodâ, vel dignitatem, alia qua genti proficerent universæ; nonnulla quibus consuleretur Ecclesiis Terra, Jura quæcumque dictavit, optimis rationibus sanxit, Judicium rectum nulla persona nequicquam ab eo postulavit.* So that nothing is plainer, than that at the beginning of his Reign he strove to oblige all sorts of People, as well the *Clergy* as *Laity*, to a good liking of his Government. *Id. lib. IV. fol. 505, 506.*

M. But yet for all this you your self have granted, that after the time of his Confirmation of these Laws of King *Edward*, you cannot deny, whether provoked by the frequent Insurrections of the *English*, or else resolving to make use

use of his Right by Conquest, he fell very severely upon the *English* Nobility and Gentry; and outed most of them of their Estates, and forced them to flee into foreign Countries; so that it seems he did not lay down his Sword, as soon as ever he came to the Crown, but used it as he pleased against whatsoever *English* he thought might be dangerous to his Government: so that notwithstanding his Confirmation of King *Edward's* Laws, he did not seem to renounce his Title by Conquest. And as for your Authority concerning the Conqueror's confirming these Laws, the main stress of the Question will lie, whether he admitted any of the *English* into his great Council, to consult of the weighty Affairs of the Kingdom, when he had once thorowly settled himself on the *English* Throne, especially if it be considered that King *William* kept not all the Promises which he made at all times. Now as you your self allow, this Grant was made in the fourth year of his Reign, but he had not then settled himself so well as he would, nor had he then made an entire Conquest of the Nation; that was not done until after the great appearance of the natural *English* in Arms, and the great meeting which *Frederick* Abbot of *St. Albans*, with others, headed at *Berkhamstead*; which was not until above four or five years after this Confirmation: so that your Testimony from the *Litchfield Chronicle* and *Roger Hoveden*, being before he settled himself as he intended to do, signifies nothing; and that it was from some time after this Transaction, that *Mat. Paris* reckons the thorow Conquest and subduing the Nation, appears by this Note in the beginning of the Life of Abbot *Paul*, Successor to this *Frederick*, *Hic primus Abbas hujus Ecclesie fuit, postquam Anglia Normannis penitus fuit subjugata.*

F. I will not deny the matter of Fact in great part to be as you say; but whether the *English* were to blame to make these Insurrections, or whether they were provoked to it by the King's unreasonable Severities, I have not now time to dispute, nor are we competent Judges of it at so long a distance of time: if it were their fault, he had no doubt very good cause to do as he did, and to punish such as were guilty; but it was altogether unjust and tyrannical to punish the Innocent with the Guilty. Nor could he have any Right to do it, as a Conqueror, since by taking his Coronation-Oath to deal mercifully with his Subjects, and to treat both *English* and *French* with equal Right, he had renounced that Title. And that he looked upon himself as a Tyrant, if he had governed without being crowned, or taking the same Oath as his Predecessors, I shall prove to you from Abbot *Bromton's* Chronicle, the Author of which lived in the time of King *Richard I.* who has (col. 962.) these words: *Cumque Willelmus Dux Normannorum, Conquestor Anglie, Tyranni nomen exhorresceret, & nomen legitimi Principis induere veller, a Sigando Cant. Archiepiscopo in Regem petiit consecrari, &c.*

But your Reply, that he did not shew himself a perfect Conqueror till he was thorowly settled, is very pleasant: as if being solemnly crowned, and taking an Oath to govern justly and according to Law, after four years quiet Possession, and a voluntary Confirmation of the Laws of his Predecessors, were not sufficient Signs of his peaceable Settlement upon the Throne; unless you will have a King to be never settled, until he has, by the force of a Standing Army, got sufficient power to do all he designs, that is, to take away his Subjects Liberties and Estates at his pleasure, contrary to his own Oath, and the Laws he has agreed to. If those be Signs of a thorow Settlement, pray consider whether the King that is gone away, was ever thorowly settled at this rate, tho I confess he was in a very fair way to give us such a thorow Settlement. But since you date this thorow Settlement from that great Transaction of Abbot *Frederick*, I am not afraid to appeal to *Matthew Paris*, from whom you have borrowed this Relation, where he tells us thus: "That after *Lanfranc* was made Archbishop, the King being now strengthened with both Swords, began more severely and manifestly to oppress the *English*; who seeing it nearly concerned their very Lives, calling a great many together, they made *Edgar Atheling* their Leader, in whom the *English* placed all their hopes; but among all the *English*, *Frederick* Abbot of *St. Albans* was the chief Promoter thereof, being a generous Man, and to be feared for his Riches, and Power; therefore the King began to be vehemently afraid lest he should lose the whole Kingdom, which he had gained by the Effusion of so much

“ much Blood, and also hazard of his Life ; and therefore being luckily taught
 “ by the Archbishop’s Prudence, he began to act more mildly with the chief
 “ Men of the Kingdom, humbly proposing Terms of Peace, and with a plea-
 “ sant Countenance inviting them to a Treaty (tho deceitful, as the end at
 “ last declared) therefore the said *English* met him at *Berkhamstead*, thinking
 “ no harm, under the leading of Abbot *Frederick* ; where, after many Dis-
 “ putes, Archbishop *Lanfranc* being present, the King swore upon all the Re-
 “ licks of the Church of *St. Albans*, as also upon the holy Evangelists, invio-
 “ lably to observe the good antient approved Laws of the Kingdom, which
 “ the pious Kings of *England* his Predecessors, and chiefly King *Edward* had
 “ established : and so being pacified, they all returned home very well satisf-
 “ fied.” So that you see this was the third time whereby he renounced all
 Right of Conquest (if ever he had any) by swearing expressly to observe all
 the antient Laws of the Kingdom, since they found his Coronation-Oath would
 not bind him, besides his so solemn Confirmation of King *Edward*’s Laws, in
 the great Council of the Kingdom not long before.

M. But pray read a little farther, and see how he resented this Force now
 put upon him, and whether at all he intended to keep what he had sworn, or
 to divest himself of his Right of Conquest ; and therefore give me now leave
 to read the rest out of this Author : “ But the King cunningly hiding his De-
 “ signs, within a few days after studied how to overcome and supplant those
 “ dispersed and asunder, whom he could not, when joined and confederate
 “ together ; which he performed by killing, disinheriting, and banishing many
 “ of them, and violating the above-mentioned Laws. And the *English* being
 “ thus spoiled at pleasure, and impoverished, without any legal Judgment, he
 “ therewith enriched his *Normans*, to the great Provocation of his natural
 “ *English* Subjects, who had of their own accord thus exalted him.” So that
 you see he never intended to keep his Oath that was thus forced upon him, for
 Conquerors do not love to be made Slaves to their words whether they will
 or no ; and therefore I may give you an Answer both as to his Coronation-
 Oath, as also to this now mentioned, from an old *English* Proverb, *That there*
was never any Oath but was either broken or kept. More Conquerors than one
 have used fair Pretences, and made smooth Promises, and dealt cunningly with
 the People to carry on their Designs, and have at first taken plausible Oaths,
 and broken them afterwards ; nay took them when they intended not to keep
 them, and knew they could not : And for Oath-breaking, *Harold*, in his An-
 swer to Duke *William*, when he demanded the Kingdom of him, had given
 him a fair Example, that *stultum Sacramentum est frangendum*. Many specious
 Oaths, Vows, and Covenants were contrived, and taken by crafty and de-
 signing Men in the late times, and imposed upon the People, contrary to the
 Oath of Allegiance they had before taken, for no other ends than to cheat
 them into Rebellion, and to make them Authors of their own Slavery ; which
 was discovered too late, when they were under the power of an Army, and
 could not help themselves, as I could prove at large would the time permit.

F. Before I give you a positive Answer to what you have said, tho I do be-
 lieve a great deal of the matter of Fact to be true, as *Matthew Paris* hath re-
 lated it either from Tradition, or else from the Legier-Book of his own Ab-
 bey ; yet I very much doubt, whether out of Hatred to this King’s severe Pro-
 ceedings, they did not represent King *William*’s Cruelty and Severity much
 greater than it was : for tho I grant, after this time, he turned a great many
 more of the *English* Nobility and Gentry out of their Estates, and put divers
 of them to death ; yet whether he did this without any colour of Law or le-
 gal Process, is very much to be doubted, since we find many Forfeitures men-
 tioned in Doomsday-Book, which had been needless, if the King had seized all
 the *English* Estates without any legal Trial : As for example, in *Essex* in *Barn-*
stable-Hundred, *In Burâ de istis Hidis est una de hominibus foris factis erga Re-*
gem ; and this was the way of Expression in the Active Voice. We find in
Norfolk, Earl *Ralf* held such Lands, *Quando se foris fecit* ; but more particu-
 larly in *Cambridgeshire* in *Wardune*, *Hardwin* holds of *Richard*’s Ancestors, but
Ralf Waders held it *Die quo deliquit contra Regem* : all which would never have
 been inferred, could this King have taken away Mens Lives and Estates with-
 out any colour of Law or Justice. And therefore you may find in all the His-
 torians

B. A. A. p.
289.

J. A. A. pag.
100, 101.

Pag. 636.

Pag. 67, 68.

J. A. A. 105.

torians of his time, that after the great Plot wherein so many *Norman* as well as *English* Lords were concern'd, and for which *Roger* Earl of *Hereford*, and *Ralph* Earl of *Norfolk* and *Suffolk*, both *Normans*, had conspired with Earl *Waltheof*, and other *English* Lords, to call in the *Danes*, and dispossess the King; yet they were convicted by a legal Trial of their Peers, and suffered death for it. So that in this he distributed equal Justice to the *Normans* as well as the *English*, who thereupon forfeited all their Estates; and yet notwithstanding this, there were some native *Englishmen* still left, who tho they had been in Arms against the King, at the beginning of his Reign, yet were nevertheless reconciled to him, and restored to their Estates: As for example, "*Edric*, " surnamed the *Forester*, who, as *Florence of Worcester* tells us, was reconciled " to King *William*, and accompanied him into *Scotland* soon after:" as also *Hereward*, the Son of *Leofric*, Lord of *Brunne*, who having lost his Estate, and being outlawed (as *Ingulph* tells us) " took Arms against King *William*, " and joined himself with those in the Isle of *Ely*; and yet, after divers great " Battels, as well against the King as his Commanders, at length having " obtained his Inheritance by the King's Allowance, he finished his days in " peace." And now here were two considerable *English* Barons who still enjoyed their Estates, notwithstanding all King *William's* Severity; and yet I do believe it will puzzle your Doctor to shew me their Names in *Doomsday-Book*: so that that Book alone is not, it seems, a certain Rule to discover what *Englishmen* were then Barons or Tenants in *Capite*.

But admit all this to be true, as you your self have represented it; can this King's Perjury to his Subjects, and Breach of all Laws, after so many solemn Oaths, give him a Right as a Conqueror over the Lives and Estates of his *English* Subjects; and that after he had solemnly renounced his Right of Conquest, by so many solemn Transactions with his Subjects, with whom you suppose he still made War, after he had for so many Years laid down his Arms? At this rate I cannot tell when Subjects may be safe. For suppose some Kings that come to a Crown by a mixt Title, partly by Force, and partly by Right, take ever so many Oaths to maintain the antient Constitution of the Government, together with the Rights and Privileges of the People; 'tis but their saying afterwards when they have sufficient Power, that they were forc'd upon them, and that they never design'd to keep them, and the Business is done, and they may then take away the Subjects Lives and Estates by this pretended Right of Conquest whenever they please. Nor does this only extend to the King himself alone, but to all his Heirs and Successors, who claim under that Title, let them take ever so many Coronation-Oaths, or make ever so many Declarations to the contrary; since they all claim under the same divine Title of the Sword; that is, as you will have it, *receive their Crowns immediately from God*, and then can never forfeit them, let them tyrannize to the utmost degree imaginable; for you have provided them with two easy and pleasant Excuses, that all Promises are either broken or kept, and *stultum Sacramentum est frangendum*. And I cannot but smile to see what an excellent excuse you have found out, for all the Breach of Oaths and Covenants of those engag'd in the late Civil Wars, since they might very well plead they had so many Royal Precedents for so doing, as sufficiently authoriz'd it; unless you will have that to be Perjury in Subjects, which must be a Divine Prerogative in Kings.

And therefore let me tell you, I am very glad for your own sake, that there is no body here but you and I, since all the Company would have cried out, and said, that this way of arguing were to make open War, not only upon all the Laws and Privileges of this Nation, but also to put the King and People in a state of War against each other: for if he once declares by such Overt-Acts as these of King *William's*, that he will not be tied, either by his Coronation-Oath, or by any Laws he has made, I doubt their Oaths of Allegiance will not long bind them neither; and they will be very ready to reply, that whatever Power began, and is continued by Force and Violence, may also be cast off by the like means: and when a King and his People are brought once into this State, it is easy to foretel what will be the Event; either he must turn out, or they must be all Slaves; and I wish it was not owing to such Jesuitical flattering Counsels as this, that the King first lost the Affections of his People, and then his Crown; since Father *Peters* himself, with the rest of the Jesuits,

Jesuits, and Arbitrary Ministers of the Cabal, could never have instill'd worse Principles than these; therefore I pray for the future either get better Reasons, or keep those to your self.

But God be thanked, both King *James I.* and King *Charles I.* had much better Thoughts of the Laws and Liberties of the Nation, since the former hath solemnly declared in a Preamble to the second Act of Parliament, in the first Year of his Reign, "That not only the Royal Prerogative, but the Peoples ^{I Jacobi. Cap. 2. Fol. 1157.} Security of their Lands, Livings and Privileges, were secur'd and maintain'd by the antient fundamental Laws, Privileges and Customs of this Realm; and that by the abolishing or altering of them, it was impossible but that present Confusion will fall upon the whole state and frame of this Kingdom." And his Son was of the same Opinion in his first Declaration at the beginning of the late Wars: "The Law (says he) is the Inheritance of every Subject, ^{Page 28.} and the only Security he can have for his Life and Estate; and the which being neglected, or disesteemed (under what specious shew soever) a great measure of Infelicity, if not irreparable Confusion, must without doubt fall upon them."

M. If I had no Love at all for the Government and Liberties of my Country (as I thank God I have a great Affection for both) yet should I not have the Impudence to contradict the Sense of two Kings and a Parliament; neither have I so little Value for those things which are the Foundations of our Happiness, as to desire they should be sacrific'd to an arbitrary Power; nor on the other side have I so great a Value for them, as to endeavour their Preservation by Rebellion, and deposing the King, which since I look upon as altogether unlawful, we are then to follow the Apostle's Rule, and not do Evil that Good may come of it. But as for what I have urged in excuse of the Conqueror's Perjury, and Breach of Laws, I confess I have said more than the matter will well bear; but I hope you will excuse it, since I confess the Argument is none of mine, but the Doctor's from whom I borrowed it, and I did not consider the bad Consequences of it: yet this much I must still freely affirm, that neither King *William* the Conqueror, nor his present Majesty, who is his Heir by an Hereditary Right of Succession, either could then, or can now at this day be lawfully resisted, much less can be deposed, or can forfeit their Royal Dignity for any Male-Administration or Tyranny whatsoever.

F. Pray give me your Reason for that, since I think you may be very well satisfy'd, that this King's Title by Conquest from King *William*, his Ancestor, can signify nothing, tho I should grant the utmost you can demand: and therefore tho I am as much against Rebellion and deposing of Princes as you can be, and doing of Evil that Good may come of it; yet the question remains still to be decided between us, whether that Resistance I maintain be Rebellion or not, and whether it be Treason to deny Obedience to a Prince, who hath done his utmost to lose the very name of King, by not observing those Conditions, on the performance of which he can only maintain his Royal Dignity. Now since I think I have fully proved the two Points I undertook, viz. both that of the King's forfeiting the Crown in the Cases I have put, as also the falsity of the matter of Fact, whereby you would maintain, *that the King has an indefeasible Right to the Crown of this Realm, as an absolute Monarch by Conquest:* since you decline arguing this Point any farther, because you find it is not to be maintained, pray let me know what other Reasons you have why you cannot come over to my Opinion.

M. Tho I am not satisfied, but that a great deal more may be farther urg'd by those who are better vers'd in this Controversy, to prove that his Majesty hath an unforfeitable Right to our Allegiance by the Conquest of King *William* and his Predecessors; yet I shall not now insist any longer upon that Title, which tho our Kings have by so many gracious Condescensions to the People of this Nation, seemed to wave, yet have they never renounced it as I know of: but since his Majesty was settled in the Throne as an absolute and lawful King, without any Competitor, by a long Series of an Hereditary Succession of above six Hundred Years standing, and confirmed by the Oaths of Allegiance of the People of this Nation both to him and his Ancestors, he is not only our King by the Laws of Man, but God also; to whom, and not to the People,

he owes his Crown; and can therefore neither forfeit it, nor be accountable to them for it: and when you can prove the contrary, you may then convince me to be of your Opinion.

F. We have already partly argued this Point at our third and fourth Discourses, concerning the Lawfulness of Resistance; but since perhaps you may have still somewhat farther to urge upon so important a Question, I desire to hear the utmost you can say, to prove that Kings owe their Power to none but God, and therefore ought never to be resisted, neither can forfeit their Crown upon any pretence whatsoever: and therefore pray appoint me some other time when I may wait on you again, and fully discuss this Point, since it is now very late.

M. I am sorry I cannot appoint you any certain time; for since I see so great a Confusion reigns every where, and that there is like to be no Term, and consequently no Business for Men of my Profession, I am resolv'd to retire for two or three Months into the Country, till I see things a little better settled than they are at present: and I heartily wish that the Convention (which I hear is like to meet in some time) may endeavour the Peace and Settlement of the Nation, by sending for the King and the Prince of *Wales* out of *France*; since I do not desire any more Conquests, nor the Government of a foreign Prince, as long as we have a lawful King of our own, who will govern us again if he might: but as soon as I return to Town, you shall be sure to know it; in the mean time I am your Servant.

F. I am yours, and wish you a good Journey.



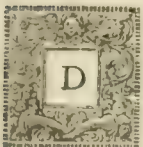
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Bibliotheca Politica.

D I A L O G U E XI.

- I. In what Sense all Civil Power is deriv'd from God, and in what Sense it may be also from the People.
- II. Whether his Present Majesty King *William*, when Prince of *Orange*, had a just Cause of War against King *James II*.
- III. Whether the Proceedings of his Present Majesty, before he was King, as also of the late Convention, in respect of the said King *James*, are justifiable by the Law of Nations, and the Constitution of our Government.

F. EAR Sir, you are welcome to Town, you have been absent a great while; and indeed I wonder how you could stay away so long, when such great things as the King's Abdication, and placing his Son and Daughter in the Throne, have been transacted.

M. I thank you kindly, Sir, but yet I must tell you, that I have been so little satisfy'd with what your Convention has done in these matters, that the very hearing of it hath been a great Affliction to me; and it would have certainly been a much greater, had I been upon the place, and seen such horrid things as the Deposition of a King, the disinheriting of his right Heir, and the setting up the Prince and Princess of *Orange*, who certainly could have no right to the Crown as long as the King lives, nor yet after his Death as long as the Prince of *Wales* is in being.

F. I confess these are very high Charges if they would hold; but if you please to consider the Hypothesis I propos'd at our last Meeting, That the King had by Breach of the Original Contract made between his Ancestors and Predecessors, and the People of this Nation, to observe the Fundamental Laws and Constitutions of the Kingdom, forfeited his Right to the Crown; all that hath been done in this great Affair, I suppose may be very well maintain'd and justify'd, from the necessity of the thing, and of maintaining the Fundamental Constitution of the Government. And therefore pray give me leave to put you in mind how far I have proceeded in the Proof of this Assertion.

First, I have made out that the King of this Realm is not the sole supreme Power thereof, neither ever was so, from the very Institution of Kingly Government in this Island.

Secondly, I have also prov'd that the King, not having the sole Power, must hold that share thereof which he enjoys, upon this imply'd or tacit Condition, That if he usurp what does not belong to him, and the People do assert their Right by opposing his unjust Violence and Usurpations, and that he still obstinately persists in this Violation, he thereby loses and forfeits not only that part of the Power which he so unjustly usurped, but also his own too: and for this I gave you the Authority of the Learned *Grotius* at our last Meeting.

Thirdly, I have also answer'd your main Argument of King *William* the Conqueror's obtaining by the Sword, and Conquest of King *Harold*, an absolute Right, and unlimited Power for himself and his Successors descended from him, over the People of this Kingdom; for I think I have sufficiently made out, that King *William* had no other Right to the Crown of *England* than by the Testament of King *Edward* the Confessor, and the Election and Recognition of the People: and this I have prov'd from the unexceptionable Authorities of the best Historians of that time. So that if he afterwards acted otherwise, and contrary to his Coronation-Oath, it was not as a lawful King, but as a Tyrant and an Usurper on the Rights and Liberties of the People, and he could not by his own unjust Act acquire any lawful Power so to govern this Kingdom; and therefore whatever Title King *William* or his Successors can pretend to, it must be by virtue of the Election of the first King of the *Saxon* Line, from whom all the Kings of *England* since *Henry I.* are descended, and consequently are oblig'd to hold the Crown under the same Conditions on which it was first confer'd. And tho I grant, that ever since the Reign of *Edward I.* the Crown has been no longer claim'd by Election, but by Succession of him that really was, or else was presum'd to be the Right Heir; yet this different way of acquiring the Crown does not at all alter the condition or manner of holding it, since our Kings have always after that time, as before, been tied to the same, or rather stricter Terms in their Coronation-Oaths, to observe and keep the Laws and Customs of this Realm; and also that the Power of the Great Council of the Kingdom or Parliament making Laws, raising Taxes, and redressing of Grievances arising from the unjust Exercise, and illegal Encroachments of the King's Prerogative, hath been exerted ever since the Crown became successive, as much as ever it was before.

Lastly, I think I have sufficiently made out that King *James* hath violated the fundamental Constitution of the Kingdom, in those several Instances I have already given, and am also ready farther to make it out if you require it; so that this being the Case, I can see no reason to the contrary, why the Crown or Legal Authority should not become forfeited to the People, who at first confer'd this Power on the first King of the *West-Saxons*.

M. I must confess you have done your endeavour to prove those Assertions you have now laid down, but I am not yet satisfied that you truly have done it. But however, not to run into unnecessary Disputes and Repetitions of what has been already argued, and which I see you are too obstinate to recede from, I shall now only oppose what you last asserted concerning the Crown's being forfeited to the People upon the King's pretended Breach of the Original Contract: for besides the absurdity of making the Crown forfeitable to the People, who are and ever were Subjects, and not Princes or Governours; whereas all Forfeitures still suppose a Right in the Persons who are to take it as superior to the Party forfeiting; there is also a greater Error and Mistake in your supposing all Civil and Legal Power to be deriv'd from the People, and by them confer'd upon their Kings or Governours: whereas the Scriptures plainly affirm, and all Divines so interpret them, that all Civil Power and Authority is wholly from God, and not from the People, who even in elective Kingdoms, tho they may name and design the Person whom they will have to be their King, yet is the Power wholly from God, who alone hath right to govern Mankind; and therefore as the People do not confer the Power, so neither can it be forfeitable to them from whom it was never deriv'd: and so much I told you at the Conclusion of our last Meeting, tho I had not then time fully to urge this Argument, as now I have. And this will press the more upon you, because you your self have already granted at several Meetings, that all Civil and Regal Power is deriv'd from God, and not from the People; and

and therefore your Notion of a Prince or Monarch's forfeiting to them, is wholly false and precarious.

F. If this be all that you have to object against our Assertion of the King's forfeiting his Royal Authority to the People, I think I can easily answer those Objections: for as to the first Absurdity which you lay to our charge, how an Authority can be forfeited by a King or Superior to his Subjects or Vassals, the Absurdity lies on your side; for I do not suppose this Forfeiture to be made to the People as Subjects, but to them consider'd as a Community of Masters of Families, and Freemen; who as the Descendants and Representatives of those who made the first King upon a certain Contract or Condition, upon the Non-performance of this Original Contract, do thereupon cease to be Subjects, as a Servant ceases to be so, and becomes again *sui juris*, upon his Master's Non-performance of the Bargain made between them: and so this Authority thus forfeited, returns to the Community of Masters of Families, and Freemen, who once confer'd it upon the first King. Nor needs this Forfeiture any more suppose a Superiority, in the Persons who are to take it, over the Prince that commits it, than when by the Law of *England* a Tenant for Life aliens in Fee, he in reversion may immediately enter upon the Estate as forfeited to him, tho the Person that held it was perhaps his own Father.

Vid. Coke *up-
on Littleton*,
p. 251.

M. But is not this then to recede from your former Concession, whereby you grant that Civil Authority is derived from God, and not from the People at all? whereas you now suppose them the only Original or Fountain of Civil Authority, and from them to be derived to all Princes and Monarchs.

F. This Difficulty wholly proceeds from your not rightly understanding the manner of God's conferring Civil Power or Authority upon those that exercise it. For the better clearing of which Difficulty, let me ask you two or three Questions: First, pray tell me whether you are still of the opinion, that Monarchy is so much of Divine Institution, as that no Government but that may be lawfully instituted by Men?

M. I will not now affirm, that Monarchy is of Divine Right; but this much I may safely aver, by what we can find in Scripture, that God instituted no sort of Government but that; and he did not make *Saul* or *David* to be only like those equivocal Kings, who might be depofable at the Will of the Estates, but conferred part of his own Divine Power upon them, without any Conditions or Limitations whatsoever: but as for those Governments called Commonwealths, tho without doubt they are not of Divine Institution, yet certainly the power of Life and Death, which they exercise, is wholly from God; since, as I have already said, a Man, not having power over his own Life, cannot confer that upon another which he had not in himself.

F. Well, I am glad we are so far agreed, that Commonwealths are endued with real Authority or Majesty as well as Monarchs, and that from no less Author than from God himself; so that whatever you have said concerning God's Institution of no other Government than Monarchy, is either not true, or not to the matter in hand: for in the first place, I have already proved at our third Meeting, that the first Government God instituted among the *Jews*, was an Aristocracy under *Moses*, *Joshua*, and the Judges, reserving the Kingly Power over them to himself. And tho it is likewise true, that God divested himself of great part of this Kingly Power, when he anointed *Saul* King; yet God's Institution of Monarchy among the *Jews* does not render it unlawful for other Nations to institute such other sorts of Government, as may best suite with the Genius of the People, and the publick Good and Safety of the whole Community. But as for your Argument, whereby you would prove the necessity of all Civil Powers being derived from God, because otherwise they could not be endued with the power of Life and Death over their Subjects, I have sufficiently taken off that difficulty at our second Meeting, and shewn you, that a Man, in the State of Nature, has not only power over another Man's Life, but also over his own; not only to hazard it, but also to lay down or lose it for some greater publick Benefit to Mankind: which is also acknowledged by the Apostle *Paul* himself, *For a good Man some would even dare to die.*

But further, to shew you the Absurdity of this Principle, let me put you this Case: Suppose that a Kingdom or Commonwealth were so instituted at the first, that no Subject, or Freeman, should suffer death for any Crime, how great

Vid. Grot. An-
not. in Mar.
p. 125.

Vid. L. L.
Will. 1.

great soever; which that I do not suppose as a thing impossible, it was for divers Ages exercised in the *Roman Commonwealth*, wherein no Civil Magistrate could lay any greater Punishment upon a *Roman Citizen*, than Banishment or Deportation. And if that Copy we have of the Laws of King *William I.* be authentick, it is by the 67th Law in his Charter ordained, That no *English* or *French* Subject should suffer death for any Crime whatsoever, but only be punished either by pecuniary Fines, Imprisonment, or else by loss of Eyes, Hands, Feet, or Members; which Law, tho I do not say was ever observed, yet it shews it was then supposed to be both possible and lawful. Now if this could be so, there would be no necessity of supposing the Authority of the Commonwealth of *Rome*, or of King *William I.* to have been derived from God, since they had renounced and refused the great Character thereof, viz. the inflicting capital Punishments; but if for all that, they still continued to be lawful Civil Governments, then it is evident that this power of Life and Death is not that which alone constitutes a Civil Power, and makes it owe its Original to God.

But to return to what your Notion concerning this power of Life and Death hath made me digress from, pray let me ask you another Question: After the Expulsion of King *Tarquin*, and before the Commonwealth of *Rome* was formed, where was the supreme Authority lodged?

M. Why, in the same Body it was afterwards, the People of *Rome*, comprehended under the *Patricians* and *Plebeians*, that is, the Nobility and Commons; who yet retained the power of Life and Death over those of their own Children and Slaves, tho they communicated a great part of their Power to the Senate and Consuls.

F. Very well: Was this Authority they so conferred on the Senate and Consuls, the same which they themselves could have exercised? Or was it any new Authority immediately derived from God, and created for that purpose?

M. I do not think it was any new created Authority, but only a part of their former Power, which they so made over to the Senate and Consuls, since they reserved one great part of it, viz. the Legislative Power, wholly in themselves: but however this power which the Fathers of Families, and Freemen among the *Romans* had over the Lives of their Children and Slaves, as also over others who were declared publick Enemies, was derived wholly from God; yet there arose likewise a new Power which these Fathers of Families were not invested with before, viz. that of making Laws, as also of War and Peace: all which Powers were derived from God, for the common Good, and Defence of the whole People or Community.

F. Herein I also agree with you, but then mark what follows: it then plainly appears, that the natural Subject of Civil Authority was the Fathers of Families, and Freemen of *Rome*; and that what share thereof was by them committed to the Senate and Consuls, it was wholly personal, and as their Representatives. This being so, pray answer me another Question: When the Senate and People of *Rome* did afterwards confer their whole Power upon the *Roman Emperors* by that Law (called in your *Institutions*, *Lex Regia*) was there then created or produced any new Authority from God to the first Emperor? Or was it the same Authority or Majesty which the Senate and People were endued with before? For either it must be the same, or else God must create a new parcel of this Royal Majesty or Authority wherewith to endue this first Emperor: which if you suppose, I can shew you a great many Difficulties and Absurdities that will follow from this Opinion; for then I might ask you, whether this Royal Majesty be like the Stoicks *Anima Mundi*, whose Parts are distributed among all the Kings in the World? or whether each King has his particular Majesty to himself? or whether the King dying, his Majesty also dies with him? or whether it exist without him, as the Soul does when separated from the Body, and by a certain kind of Metempsychosis, is transferred to the new Monarch?

M. I shall not stick at present to affirm, that this Authority or Majesty of the *Roman Emperors* was originally derived from God, tho not immediately, but by the Mediation of the People of *Rome* as his Instruments, especially ordained for the Derivation of this Imperial Power.

F. Well

F. Well then, I see you and I are at last agreed; for I suppose all Civil Power to be so derived from God to the People, and by them, as an instrumental Cause, conveyed to the Person whom they agree to make their King. But if this were so in the *Roman Commonwealth*, why are not all the rest of the Nations of the World indued with the like Privilege; so that no Man may justly make himself King over them without their Election, or Recognition at least?

M. Perhaps in those Nations where the People have, from the first Institution of the Government, retained the whole Civil Power in themselves, or else by the Extinction of the Royal Family they became possessed of it; this Power may afterwards by them be transferred or made over to one single Person or more: but this can by no means hold in divers other Cases, where God immediately bestows a Civil Power or Authority without any Consent of the People, as it is in the case of Kingdoms acquired by Conquest in a just War, (for as to unjust Wars or Conquests, I freely own they confer no Right at all.) But since you will not, I suppose, deny that such a rightful Conquest confers an absolute Power on the Conqueror, over the Lives and Estates of the Conquered, as also an Obligation in them to submit to and obey the Conqueror; hence must arise a new Civil Power, without any Consent of the People intervening: which Authority, since no Man can confer it upon himself, must necessarily be immediately conferred by God; since, as I said before, the People are only passive, and have no hand at all in the conveying of it. And this is the more remarkable, because I suppose you will not deny, but that where one Kingdom or Empire has owed its beginning to the Election or Consent of the People, I could name ten that have begun from Conquest: So that it is evident, the People are never, or very rarely, the efficient Causes of Civil Power.

F. Tho this Question concerning Conquest does not immediately concern our Kings, who, as I have already proved, do not owe their Regal Authority to Conquest, but to the Election and Consent of the People; yet since the Title to a great part of our King's Dominions begun at first from Conquest, I shall now say something of it. First then, you grant that only Conquest in a just War can confer a Right to the People's Obedience; and therefore since the greatest part of the Governments have commenced from unjust Conquests, it will therefore follow that the Right of such Princes to those Kingdoms and Territories so unjustly acquired, could not owe its Original to Conquest, but either to a long Possession, or the Extinction, or at least the Dereliction of the right Heirs, together with the Consent of the People to confirm their Titles. So that it is not only my Opinion, but that of the most learned Writers in your own Faculty, such as *Grotius* and *Puffendorf*; that Conquest alone, tho in the justest War, can confer no Right over a Free People without their Recognition or Consent: I have added *of a Free People*, because I much doubt, upon the Conquest of a Kingdom or Territory (for example) where the People do own themselves mere Slaves to their Monarch; whether their Consents be at all necessary or not, since they fall to the Victor as the moveable Goods of the Prince conquered: but then the Power he has over them, is not properly a Civil Authority, but that of a Lord over his Slaves. And hence it is that in all Kingdoms and Territories, obtained by Conquest among us in *Europe*, Princes do not think themselves to have any Title to their Subjects Allegiance, before they have acknowledged them for their lawful Sovereigns, by some publick Act either of the Estates or Representatives of the Kingdom, or else by the particular Oaths of all the chief Subjects or Inhabitants of those Places.

M. I shall not at present dispute this Point any farther with you, but yet there remains one great difficulty behind, concerning the manner of God's conferring this supreme Power upon Princes and States: For you your self have already granted, that the power of Fathers and Masters of Families is not of the kind, but somewhat specifically different from Civil Power or Authority; and if so, since they had not this Civil Power in themselves, I cannot see how they could confer it upon another, since *nemo dat quod non habet*: And therefore there still seems a necessity of God's conferring a new Power upon that Prince, or upon those Persons whom they shall pitch upon to rule over them.

Vid. Puffen-
dorf de Jure
Gentium, l. 3.
c. 7.

F. I hope I shall as easily remove this Difficulty, if you will please to consider the manner how God confers this Civil Authority upon Men, which is certainly by natural Means, and is to be found out by natural Reason, without any Divine Revelation; since Civil Government was instituted, and Men were obliged to obey it, long before the Old Testament was written. But the true Original of it is thus to be traced: First, It is certain, that right Reason sufficiently taught Mankind when it began to multiply, and that they were sensible, from the great Wickedness and Corruptions of Mens Natures, that their common Peace and Safety could not be well maintained, unless Civil Governments were instituted; which could not subsist without a supreme Authority placed in some one or more Persons. This being a Dictate of the Law of Nature or right Reason, and so highly conducing to the Good of Mankind; it must needs owe its Original to God, the Author of all Truth, and the Giver of every good and perfect Gift. From whence it follows, that not only the Institution of Commonwealths themselves, but also the supreme Power with which they are indued, does not proceed merely from Men, but from God's Command, exprest by the Law of Nature or right Reason: So that the same Legislator, who first prescribed Civil Society, also prescribed the Peace and Order of that Society. Now a supreme Civil Authority, either in one or more Persons, is the Life and Soul thereof, without which it cannot live or subsist.

But it is certain that those things are not only said to proceed from God, which he immediately institutes, without any human Act intervening; but those also which Men by the Conduct of right Reason, and according to their present Occasions and Necessities, have introduced to fulfil that Obligation that lay upon them, to promote the common Good and Safety of Mankind. And since in a promiscuous ungoverned multitude, that great Law of Nature, which prescribes the publick Peace and Concord of Mankind, cannot well be exercised (the Unruliness of Mens Passions considered) nor be maintained without some supreme Civil Authority to keep Men in order; it is plain that God, who enjoind Men this, does also command that Civil Societies should not be only instituted, but their Authority also obeyed, as derived from himself, and as the necessary means of obtaining this great end of all the Laws of Nature, the common Good and Safety of Mankind. And hence it is that he hath not any where prescribed or instituted any particular Form of Government, but leaves the choice of it to the particular Genius and Temper of each Nation and People.

This being settled, your Objection is easily answered, How Civil Power can be conferred, without an immediate conferring of it from God, since the People in the State of Nature had it not before: which proceeds from your not considering, that this supreme Authority is not like the Soul of Man, an immaterial Form, that gives Knowledge and Understanding to the Body, and may be separated from it; but is only a moral Quality, which may be produced by the mutual Consent of those that institute it, as the productive Cause thereof, tho they had it not formally in themselves before; just as from many Voices singing in Consort, tho in different Tones, there arises a Harmony, which was not in any single Voice alone. Therefore since Civil Authority proceeds from the Non-Resistance of the Subjects, and their Concession that the supreme Powers should freely dispose of their Bodies and Goods for the publick Safety, it plainly appears, that in each particular Master of a Family and Freeman there lay (tho hidden and dispersed) the Seeds or Rudiments of supreme Power, which by mutual Compacts did afterwards grow into a perfect Civil Authority. And thus not only many Masters of Families, and Freemen, may combine together for their mutual Safety to erect a Commonwealth, by appointing one or many Men to rule over them for their mutual Safety; but it is not impossible, but that from the Government of a Master of a Family, having many Villages and Slaves under his power, there may arise a perfect Kingdom: for the paternal Power does chiefly respect the Education of Children, and that of a Master, the Government of Servants, for his own advantage; yet is there not so great a distance between the Power of a Master of a Family and Civil Authority, that there can be no passing from one to the other, without a new Authority, immediately created by God for that purpose.

For

For suppose a Master of a Family, having a numerous Train of Children and Servants, should permit both of them, by way of Emancipation or Manumission, to enjoy such a Portion of Lands, or other Goods to their own use, as also to govern their own private Families and Affairs as they shall think fit, provided they will still obey him as their Head and Governor, and contribute the utmost Assistance of their Lives and Fortunes for the publick Safety; I cannot see any thing that would be wanting to the making such a Master of a Family a lawful and absolute Prince, provided he was endued with such a Power as to be able to protect them: yet all this while, without supposing any new Divine Authority to be infused by God upon his Accession to this Dignity.

M. I confess you have given me a more exact account concerning your Sense of this matter than ever I had before; and therefore I shall not further dispute this Point with you: only let me tell you, that upon this Hypothesis of yours is founded that desperate Opinion concerning the real Authority or Majesty of the People, which the Commonwealths-men suppose still to reside in the diffusive Body thereof, after the Government is instituted, and by virtue of which they suppose there still remains a power in them to call their Kings or Governours to an account, and to punish them for Tyranny, or any other supposed Faults, against the fundamental Constitution of the Government, or of the Original Contract, as those of your Party are pleas'd to term it.

F. Well then, to let you see I am none of those Commonwealths-men who maintain any such desperate Doctrines, here I do freely own, that where the People have parted with their whole Power, either to a Monarch, or else to a supreme Council or Senate, from thenceforth they have nothing at all to do to call such Governours to an account, or to punish them for the highest Tyranny or Oppression they can commit. The utmost I have allowed as lawful to be done in this Case, in all the Conversations we have had, is no more than this; That the People, in case they see themselves like to be destroyed and ruined both in their Persons, Consciences, and Estates, may, even under the most absolute Governments, stand upon their own Defence, and prevent their being thus totally ruined and enslaved; and may also cast off all Allegiance to such Powers, in case they refuse to treat them with greater Justice and Moderation for the future. But as for such limited or mixt Governments as ours are, where the People have still retained a share in the Legislature, and also in the raising of publick Taxes; yet since the King is by Law exempted from Punishment, or rendering any account of his Actions either to the People or their Representatives, the utmost that I contend for, is, That since the King receives only a limited Power of ruling according to such and such Laws, and will usurp that share of the Government that does not belong to him; in such Cases, if he refuse to amend, then they may resist his Officers and Ministers, nay himself in Person, in the execution of such violent and illegal Actions. And if he still persist, and refuse to amend, that then at last they may proceed to declare, that he hath forfeited his Crown or Regal Right of ruling over them; and in such case I hold that it again devolves to the People, from whom it first proceeded. And that this is no new Doctrine, I have the Authority of *Fortescue* on my side; who, in his Treatise *De Laudibus Legum Anglie*, after having shewn that all political or limited Governments proceeded at first from the Consent of the People, proceeds thus, addressing himself to Prince Henry, Son of King Henry V. (for whom he composed this Work) *Habes ex hoc jam, Princeps, institutionis politici Regni formam, ex qua metiri poteris potestatem, quam Rex ejus in Leges ipsius aut Subditos valeat exercere. Ad Tutelam namque Legis, ac Subditorum, eorum Corporum & Bonorum, Rex hujusmodi erectus est, & ad hanc Potestatem a Populo effluxam ipse habet, quo ei non licet potestate alia suo Populo dominari.* From whence we may observe, that he calls the Government of this Kingdom, not *Regnum* simply, but *Regnum Politicum*, that is, a politick or limited Kingdom, in opposition to *Regnum Absolutum*. This he calls a Power flowing or proceeding from the People; and if it thus proceeds from the People, it must certainly return to them again upon the failure of the Conditions to be performed on the King's part. Nor does this suppose any real Majesty or Authority in them who take this Forfeiture, any more than it does suppose it in the People, according to your own Hypothesis, when

the Civil Authority does again devolve to them upon the death of a King without lawful Heirs.

M. I do now very well understand your Hypothesis, but I think Princes are not thereby in a better Condition by being thus accountable to, and unpunishable by the People, but that they are rather in a much worse; since you say they may resist, nay kill them, when they are once entered into a State of War against them. For where Princes are accountable to their People or Senate, they may then be admitted to be heard to make their Defence, in case of any Oppression or Misgovernment laid to their charge; as the King of *Poland* may at this day, to the great Assembly of Estates or Dyet of the Nation: whereas in the case of the King, as you have put it, tho he is not accountable to the Parliament, yet he is still liable to that which is more dangerous, *viz.* to be judged, censured, and declared forfeit by every inconsiderable Fellow of the Rabble, on pretence of violating this Original Contract, and having broken the fundamental Constitution of the Government, and so shall be condemned unheard, and perhaps without any just Cause: so that I think a Man had as good be a Bearward, as a King upon such Terms.

F. The Men of your Principles I see are not to be pleased, unless Princes may do whatever they have a mind to without controul, or any Man's judging or opposing the Illegality of their Actions: For if a Parliament takes upon it self to judge of the King's Actions, this is calling their Princes to an account, and a thing against the Laws of the Land, as also that of Nations; if the whole Body of the People take upon them to judge when he has violated the fundamental Laws of the Kingdom, and broken the Original Contract, and thereupon resist him, this is making the King liable to be judged and censured by every mean Fellow of the Rabble. But to let you see that both judging and disobeying the King's Commands, if contrary to Law, is not a thing of such dangerous Consequence as you would make it, appears by the late Petition of the seven Bishops, wherein they take upon them to judge, that the King's late Declaration of Liberty of Conscience being against several Acts of Parliament, they cannot with a safe Conscience publish it, or agree to the reading of it in the Churches. Now I desire to know whether this be not a making the King's Actions liable to be judged and censured by every one of the Rabble, since these Bishops acted thus, neither as Privy Counsellors, nor as Peers in Parliament? For by the same Right by which they took upon them to make this Declaration, by the same Right, not only every Curate of a Parish, but also every Layman in *England*, was free to judge of the King's Breach of this Law, and consequently of denying Obedience thereunto; which Disobedience, if it once prove general, will quickly make the King's personal Commands wholly insignificant. So that it seems it is not the Peoples judging of the Illegality of the King's Actions and Commands, which is the thing you find fault with, since when these Bishops acted thus, all those of the Church of *England* highly commended it: So that it seems it is not the bare Censuring and Disobedience that makes it a Crime, but it is the resisting such violent and illegal Orders and Commands, and at last declaring that Power void and forfeited by which they were made, that sticks in your Stomach: which is as much as to say, that this Judging and Disobedience in it self is no Crime; but the pushing it home, and doing it in such a way as that it may be mended for the future; tho this is never lawful to be done, but when things come to that extremity, that all milder Remedies are become ineffectual.

But to answer your Objections a little more closely, the Consequences of my Opinion are not so dangerous as you suppose them, if you will please to consider what I have already laid down at our last Meeting. As first, That this Resistance is never to be made, but when the violent Breach of the Laws becomes evident and undeniable, not to the Rabble alone, but to the whole Nation, that is, all sorts and degrees of Men; and as long as there is any Question about it, I acknowledge it is by no means to be used. And lastly, As to the declaring the Regal Power forfeited, this likewise is never to be done, but when the King becomes so obstinately resolved to pursue those evil and illegal Courses, as that he is utterly irreclaimable, and refuses all Propositions and Terms of amending or redressing them. And as to what you say,
that

that the King is hereby deprived of all means of justifying himself, or vindicating his Actions; that is not so, since if a War be once begun, he may do this either by Declarations, Messages, or Treaties, as King *Charles I.* did in his War with the Parliament; by which means he gained a great many both of the Nobility, Gentry, and Commonalty to his Party, who were before absolutely set against him. But if you will needs have a Parliament to judge and examine the reality of this Forfeiture, I so far join with you, that tho every private Man may first judge thereof, yet is it not become absolute, and an Act of the whole People, till the Estates of the Kingdom, as their Representatives, have by some solemn Vote or Declaration made it so.

M. Well, I see you do all you can to make the best of a bad Cause; but tho I think nothing of what you have said can give Subjects any Right to resist, much less to cast off all Allegiance to their natural Prince, yet I shall not now dispute this Point any longer with you, but will proceed to the Merits of the Cause, and shall let you see, that even upon your own Principles, the King has not been dealt withal in this whole Transaction, either like an Ally by the States-General of the *United Provinces*, or like a near Relation or a Son-in-law by the Prince of *Orange*, or like a King by his own Subjects. To begin with the States of *Holland* in the first place, it is apparent that they have acted treacherously with the King, and contrary to the last Treaty of Peace and Alliance, in furnishing the Prince of *Orange*, as their Captain-General and Stadtholder, both with Ships, Men and Money, to make this late Expedition against *England*, without so much as ever declaring the Cause of their Quarrel, or demanding any Satisfaction, if any occasion of Difference had been given.

But the Prince of *Orange's* dealing with the King his Father-in-law, has been much less justifiable: for, in the first place, he is not only guilty of the same fault with his Masters the *Dutch*, in beginning a War without ever declaring the Causes of it, or demanding any Satisfaction or Reparation if he had been injured, till it was too late to go back, and that his Fleet was ready, and the Army shipped for the Expedition; but what was more unkind from a Nephew and a Son-in-law, who had reason to expect all the Satisfaction which a King, an Uncle, and a Father-in-law could give: tho indeed, to speak the truth, the whole War was, in my Opinion, altogether unjust on the Prince's side, since his chief Pretences were to redress Grievances, and to re-establish the Bishops and Church of *England* with the Colleges in their just Rights, and also restore the whole Nation to the just execution of the Laws, by a Free Parliament and Privileges. Now I desire to know what the Prince of *Orange* had to do, either as a Neighbour or a Son-in-law, to concern himself with the Misgovernment of Affairs in *England*, much less to countenance and take the part of those many Malecontents and Traitors, who, after the Duke of *Monmouth's* Rebellion, went over into *Holland*? So that upon the whole matter, I can find but one thing which he had so much as a pretence of making war about, if it had been real, viz. the pretended supposititious Birth of the Prince of *Wales*; and yet even for this he ought not to have made War, till such time as all reasonable satisfaction in this matter had been demanded and denied him; and that the next Parliament, which the King had before declared should meet in *November* last, had been either hindered from meddling in it, or that they had failed to make a due Enquiry into it. But if we look home——

F. Pray, Sir, before you come to consider what has been done here, give me leave to justify the late Proceedings of the States-General, and the Prince of *Orange* in this matter. First, As to the States, it is a very great Mistake, that they made this War upon the King in their own Names, or furnished the Prince of *Orange* with Ships or Men as their Stadtholder or General; they did it as he was a free Independent Prince, whom they looked upon to have a good Cause of making War against the King of *England*, as one they had great cause to believe was so far engaged in the *French* Interest, as instead of standing neuter in this War with the Empire, they every day expected when he would join with *France*, and declare War against them, as they had reason to fear by several angry Memorials which the *French* King's Envoy in *Holland* had not long before given them: so that indeed it was but according

to the Rules of Self-preservation to begin first, especially when it might be done without their appearing in it at all. But granting this War had been made in their own Names, it had been but a just return for what had been done to them before by the late King, who made actual War upon them, without ever giving them the least notice, or demanding satisfaction for any Wrongs or Damages received; and this was the more justifiable, because his present Majesty, when Duke of *York*, was looked upon to have a very great hand in those Counsels which began that unhappy War, in which he himself served as Admiral. But as to the Prince of *Orange*, there is much more to be said in his Justification: for, in the first place, tho in some respects he was a Subject, by living under, and enjoying divers Lands and Territories, and Commands within the Dominions of the *United Provinces*; yet as he is Prince of *Orange*, he is a free independent Prince, and, as such, has a Right of making War and Peace: and if so, all that is to be further enquired into, is, whether the Prince had any just cause of making war upon the King or not. Therefore to answer your first Objection against the Prince's making war upon an Uncle and a Father-in-law, without first demanding satisfaction, and then denouncing War if he could not obtain it; I confess this were a good Objection, if you could once prove to me, that the Prince could have been sure to have had granted him whatever he could in reason demand, both in respect of the Church of *England*, the Security of the Protestant Religion, the Rights and Liberties of the Subjects of *England*, and his own particular Concerns in respect of the Prince of *Wales*. But whoever will impartially consider the Terms that the Prince and King were upon just before his coming over, will find that he was not obliged to give the King notice of his Intentions, by first demanding satisfaction, and then denouncing War if it had been denied; since the King might then have joined his own with the *French* Fleet, and sent for *French* Forces into *England*, and then all that the Prince could have done, in behalf of himself and the Nation, had been altogether in vain. And then tho I grant that such satisfaction ought to be demanded in most Cases, yet will it not hold in this; where if the Prince had sooner discovered his Designs, the King might have easily prevented them. And how near this was to have been put in execution, may appear by this, That Succours were actually offered by the *French* King, and if they were refused by ours, it was partly because it was too late for the *French* Fleet to be then put out, and partly out of a politick Consideration, that besides losing the Hearts of his *English* Subjects, it might give the *French* such a footing here, that they would not be easily gotten out again. But indeed it seems as if the old formal way of making war was quite out of fashion; since *Charles II.* made war against the *Dutch*, and the King of *France* so lately against *Spain*, the Elector *Palatine* and the Emperor, without any Observation of those Formalities.

But if we consider the Grounds and Causes of this War, as they are set forth in the Prince's late Declaration, they may be reduced to these three Heads:

First, The Restoration of the Church of *England*, with the Bishops and Colleges to their just Privileges.

Secondly, The securing the Rights and Liberties of the Subject from the Dispensing Power, and those other Incroachments that had been made upon them by the partial Judgments of Popish or Corrupt Judges.

And, *Lastly*, The Enquiry into the Birth of the Prince of *Wales*. In all which the Prince was so reasonable, as to refer the Decision of these Differences to the Judgment of a Free Parliament.

Now as for the first of these, That the Prince as a Neighbour, and of the same Religion with us, might justly secure the Interest of the Protestant Religion here, and also redeem the Clergy from the Persecution they lay under, is very evident; since it has always been held lawful for Princes to take the part and espouse the Interest of those of the same Religion with themselves, tho Subjects to another Prince. Thus *Eusebius* makes it a good cause of War by the Emperor *Constantine* against *Licinius*, because he persecuted the Christians living under his Dominions: So likewise in later Ages, Queen *Elizabeth* assisted the *Dutch* Protestants of the *United Provinces*, and those of *France*, against the Persecutions and Oppressions they suffered from their own Princes;

as to the *French* Protestants, King *Charles I.* sent a Fleet and an Army to their Assistance in 1627.

But as to the next Head, the Oppressions we lay under in respect of our Civil Liberties, the Prince had as great, or rather greater Right to vindicate these than the former. For *Bodin* and *Barclay*, tho they suppose it unlawful for Subjects to take up Arms against their Prince, tho ever so highly oppressed; yet they count it not only lawful, but generous and heroick for a neighbouring Prince, to rescue injured and oppressed Subjects from the Tyranny of their Kings. So that if the King had by his dispensing Power, his levying of Taxes without Law, and taking away the Freedom of Elections for Parliament-men, almost totally dissolved the Government, and brought it to the Condition of an Absolute Monarchy, it was high time for the Prince to put a stop to those Incroachments, both in respect of his own particular Interest, and also of the States, whose General and Stadtholder he is. Of the former, since if this Kingdom should once become of the Popish Religion, by the means of a Standing Army, and those other Methods that have been taken to make it so (granting the Prince of *Wales* to be truly born of the Queen) yet should he happen to die, the Popish Faction here in *England* would in all likelihood debar the Prince and Princess of *Orange* from their lawful Succession to the Crown; or at least would never admit them but upon condition of establishing of Popery and arbitrary Government in *England*: the former of which is as contrary to their Consciences, as the latter is to their Principles and Inclinations.

So on the other side, if the Prince of *Wales* be not the Queen's true Son, the Prince and Princess of *Orange* had certainly a much greater Interest, as the presumptive Heirs of the Crown, to demand satisfaction in that great Point, which so nearly concerned their Right of Succession; for then certainly they might justly demand satisfaction, especially when they desired no more but to have this Business left to the Inspection of the Estates of the Kingdom, as the only proper Judges of the same. For as to the Privy Council, who by the King's Command (tho without any Precedent) had taken upon them to hear and determine this matter, their Highnesses certainly had no reason to be satisfied with it; since, besides the incompetency of the Judges, the King himself appeared too partial and interested in the Affair, for them to sit down by their Judgments. And as for what you say, that the Prince ought first to have tried, whether the King and Parliament would give him that satisfaction he demanded; this was very dangerous for him to hazard: for suppose the King would never have permitted this Affair to have been impartially inquired into by them, or that the Parliament had been (as it was very likely to be) packed and made up of Papists, Fanaticks, and Time-servers, who either would not, or else durst not have examined this matter as they ought: his Highness had been then to play an After-game the next year, and what might have happened in the mean time, God knows; and therefore he had all the reason in the World, whilst the *French* King's Arms were employed in *Germany*, to demand satisfaction with the Sword in his hand. This is what I have to say in justification of his Highness's Arms, which if they are just on his side, I think I can as easily prove what has been done for his Assistance by the Nobility, Gentry, and Commons of this Nation, to have been so too.

M. I shall not any longer dispute, whether the *Dutch* and the Prince of *Orange* may not make some fair Pretences for what they have done; since making War for Security, and by way of Prevention, is no new thing: tho I confess what you say, in respect of the Prince of *Wales*, had been a sufficient cause of War, had there been any true grounds for that Suspicion. But since there was no just cause given why his Highness should suspect his Birth not to be genuine, and that even in the present Convention it self there could be no proof made to the contrary; I think it is now evident, that it was a wicked and unjust Calumny upon his Majesty and the Queen, since he himself, in the last Paper he left behind him at his going away, appeals to all that know him, nay even to the Prince of *Orange* himself, that in their Consciences neither he or they can believe him in the least capable of so unnatural a Villany, nor of so little common Sense, to be imposed on in a thing of such a nature as that.

But as for those Noblemen and Gentlemen, who have declar'd for the Prince of *Orange* since his Arrival, I think that they are no way to be justify'd; since granting them to have been satisfy'd, that the Prince's Demands were lawful and reasonable, yet sure they ought not to have taken up Arms on behalf of a foreign Prince, against their natural Sovereign: but if in their Consciences they had believed his Quarrel to have been just, the utmost they could have done, had been to have stood Neuters, without concerning themselves either with the one or the other Party; and then if the Prince had gain'd his point either by Arms or Treaty, they might have enjoy'd the good Effects of it, without breaking in upon the Church of *England's* Principles of Passive-Obedience and Non-Resistance, and so many Acts of Parliament made to the same purpose. But as for those Officers and Soldiers, who basely and perfidiously deserted the King at *Salisbury*, and ran over to the Prince's Army with their Commissions in their Pockets, they cannot possibly be justified either by the Law of the Land, or that of Nations; since certainly they acted contrary to both.

F. Before I speak any thing concerning the Business of the Prince of *Wales*, give me leave to say something in justification of those Noblemen and Gentlemen you so highly accuse; and tho we discours'd something of this matter at our last Meeting, yet since you have again renew'd the Charge against them, I cannot but again vindicate them in what they have done. In the first place, pray call to mind, that it has sufficiently appear'd by the small Forces his Highness brought over with him, that he never intended to conquer this Kingdom, or impose any thing upon it, contrary to the known Laws and Customs thereof; and therefore, as appears by his Declaration, his chief hopes of Success against so numerous an Army, made up of the flower of three Nations, depended on that assurance he had of some considerable Assistance from the Nobility and Gentry of *England*, and perhaps from some of the Officers of the King's own Army; and that this was lawful in both of them, I thus prove: You may remember I made out at our last meeting but one, that when the Nation lay under any great intolerable Oppression, by reason of the Violation of their just Rights and Liberties; the Clergy, Nobility and Gentry thereof, did always look upon it as their Right and Duty to vindicate the same by a vigorous Resistance, when no gentler means could suffice. Secondly, I have prov'd that it neither was, nor could be the intent of those Oaths and Declarations made in the two first Parliaments of King *Charles II.* to deliver up their Lives, Liberties and Estates wholly to the King's Mercy, let him use them as he pleas'd; and if they did not, it must necessarily follow, that upon the King's Violation of their Religion, Liberties and Properties, they had still a Right left them to defend themselves from such Oppression and Tyranny. Lastly, "I have also prov'd (as the Convention also lately declar'd) that the King by exercising his dispensing Power, by committing and prosecuting the seven Bishops, by setting up an Ecclesiastical Commission contrary to Law, by levying Money by his Prerogative, without or contrary to express Acts of Parliament, and by raising and keeping up a standing Army in time of Peace, commanded by Officers who had never taken the Test appointed by the Statutes made for that purpose, and consisting of so many Popish Soldiers, who having never taken the Oaths of Supremacy and Allegiance, were altogether incapable of serving in his Majesty's Army; and by doing divers other things contrary to the known Laws, Statutes and Liberties of this Realm, too long now to particularize; had broken the Fundamental Constitution of the Kingdom." This being the Case, I desire to know how it was possible for the Nation to have a firm and settled Redress of these Grievances, without a Free Parliament? Or how it was possible to obtain such a Parliament (the late taking away of Charters and Regulation of Corporations consider'd) unless those Obstacles had been first remov'd? And how they could be remov'd, without some Force proportionable to what the King had rais'd to hinder it, I cannot tell. And therefore it is a very vain Project of yours, to suppose that those Noblemen and Gentlemen should have sat still, and not have declar'd themselves some way or other in this Quarrel; which is all one, as to say, they ought to sit still and see a generous Prince ruin'd, who had come in for their Redemption, and to have then expected a Remedy for all these illegal Violations and Oppressions, when the King had kill'd or destroy'd the Prince of

Orange

Orange and his Army, by his Majesty's yielding to all the same Conditions that the Prince had demanded. This indeed would have been not to be parallel'd any where but in a Romance.

But as for those Officers and Soldiers who you say deserted the King, and went over to the Prince from *Salisbury*; tho I grant they make a great noise, yet were they not a Thousand Men, Soldiers, Officers and all, (as I am credibly inform'd) which was but a small Number, in comparison with the King's whole Army: and yet these may very well be defended upon the same Principles with the former; for if the Violations of our Liberties were so great and dangerous, as I have now set forth, those Gentlemen were certainly oblig'd to prefer the common Good of the Kingdom, in the Preservation of their Religion and Liberties, before any private Interests or Obligations whatsoever, tho it were to the King himself: therefore it was more his than their fault, if they deserted him. And as for their going away whilst they were his Soldiers, and with their Commissions in their Pockets; I suppose you cannot expect that the King should have ever given them leave to quit his Service, or have accepted of their Commissions, if they would have surrender'd them, unless at the same time he had clapt them up in Prison for offering of it: and if then they were persuaded that it was their Duty so to do, it is but a Puntilio of Honour, whether they went away with their Commissions in their Pockets, or had left them behind them; since their going off was a Surrender of their Commissions, and a sufficient Declaration, that they could not with a safe Conscience serve the King any longer in this Quarrel. And you see that the Desertion of these few Men had such a fatal Effect, that it cast such a panick Terror upon the King, and the whole Popish Faction about him, as to make him run away to *London* without striking a stroke. But that the Prince of *Denmark*, with the Dukes of *Grafton* and *Ormond*, and Lord *Churchill*, were convinc'd of the danger this Kingdom was in, both in respect of their Religion and Liberties, appears by their leaving the King, and going over to the Prince, where they could never expect to be put into higher Places of Honour or Trust, than what they enjoy'd already under his Majesty: and therefore that Expression of the Lord *Churchill*'s, in his Letter to the King, is very remarkable; "That he could no longer join with self-interested Men, who had fram'd Designs against his Majesty's true Interest and the Protestant Religion, to give a presence to Conquest to bring them to effect". And one would be very much inclin'd to believe so, considering the great number of *Irish* and *Scottish* Papists who have been brought over and list'd here; tho with the turning out and disbanding of a great many *English* Officers and Soldiers out of several Companies.

But to come to the Business of the Prince of *Wales*, which you say was a mere Calumny, and an unjust Suspicion on the Prince's side: tho I will not affirm any thing positively in so nice a matter, since the Convention has not thought fit to meddle with it; I shall only say this much, that if there have been any Jealousies or Suspicions rais'd about it, the King may thank those of his own Religion, who were intrusted with the management of the Queen's Lying-in. For in the first place it look'd very suspicious to us Protestants, who do not put much Faith in the Miracles of the Romish Church, that immediately after the presenting of the Golden Angel to the Lady of *Loretto*, and the King's Pilgrimage to *St. Winifred's* Well, the Queen after several Years Intermission, should again be with Child; and when she was so, should have two different Reckonings: which tho it may be forgiven young Women of their first Children, yet those who have borne so many Children as her Majesty, are commonly more experienced in these matters.

M. What is all this to the purpose? Was it not prov'd by many credible Witnesses, and those of the Protestant Religion, before the Privy-Council, that they were not only present in the Room when the Queen was deliver'd, but that they had seen Milk upon her Linen before her Delivery; and that they had also felt her Belly immediately before it, and found that her Majesty was big with Child, and ready to be deliver'd? and the Midwife swears that she actually deliver'd her. So that since every Person is to be presum'd to be the true Son of those Parents that own him for theirs; so nothing but a direct Proof to the contrary, and that by undeniable Evidence, ought to make any

Man

Man believe otherwise ; much more in the concern of the Heir Apparent to the Crown : and therefore I know not what you would have had done, which has not been observ'd in this nice matter.

F. And, Sir, let me tell you, because it was so nice a matter, and concern'd no less than the Succession of three Kingdoms ; therefore the whole Nation, as well as the Prince and Princess of *Orange*, were to be fully satisfy'd of the reality of the Prince's Birth : since they were all sufficiently sensible that there wanted nothing but a Male-Heir to entail Popery on us and our Posterity. And therefore there ought to have been present such Persons as had no dependence upon the Court, and who ought to have been delegated by the Prince and Princess of *Orange*, since the Princess of *Denmark* could not be there in Person ; but instead of this, the only two Ladies who (as I am inform'd) were trusted by the Princess to be present at the Queen's Labour, were never sent for till she was brought to Bed and the Child dress'd. And as for the rest of the Witnesses, they were either Lords, or other Persons, who only swear they stood in the Room at a distance, and heard the Queen cry out ; and immediately after the Child cry, some time before they saw it. And as for the Ladies, the greatest part of them swore no further than the Lords. So that notwithstanding all that they have sworn in this matter, there might have been a trick put upon them, and they never the wiser : since you may read in *Siderfin's Reports*, of a Woman who pretended to have been deliver'd of a Child by a Midwife within the Bed ; and yet many years after, this was prov'd to be a supposititious Birth, by the Deposition of the Midwife, and the poor Woman who was the real Mother of the Child, and others that had been of the Conspiracy. And what has been done once, may be done again.

Siderfin's Reports, Temp. Car. 2. Fol. 377, 378. *The King against Buckworth, Tuckee, Gill, &c.*

'Tis true, the King himself with one or two Ladies depos'd something further as to Milk, and the feeling of the Child immediately before the Birth ; but his Majesty, if it be an Imposture, is too deeply concern'd in it, to be admitted as a competent Witness. And as for the rest of the Ladies, they are likewise, as being the Queen's-Servants, and having an immediate dependence upon her, to be excepted against, and under too much awe, to speak the whole Truth. But it is very strange to me, that none of them depos'd any thing concerning their seeing any Milk come from her Majesty's Breasts after she was deliver'd. And perhaps there was good reason for it, for I have had it from good Hands, that she had none afterwards, whatever she had before ; the reason of which deserves to be enquir'd into, since it is very rare. But as for the Midwife, her Deposition is equivocal ; *That she took a Child from the Body of the Queen*. She is also a Papist, and consequently a suspected Witness in this Cause. Whereas all this might have been prevented, had the Queen (were she really with Child) been perswaded to be deliver'd not within the Bed, but upon a Pallate ; where all the Persons whose Business and Concern it was to be present, might have seen the Child actually born : nor needed there to have any Men been by, tho I have heard that the late Queen of *France* was deliver'd of the present King, the Duke of *Orleans* not being only present in the Room, but an Eye-witness of the Birth. And so sure, if somewhat of this nature had been done, it might have sav'd a great deal of Dispute and Bloodshed which has already, or may hereafter happen about it. And therefore I do not at all wonder that the Prince of *Orange* should not take this partial Evidence that has been given for sufficient Satisfaction ; so that whether this Birth of the Queen's was real or not, I shall not now farther dispute. It is sufficient, that if his Highness and his Princess had just and reasonable suspicions of an Imposture, whilst they remain under them, they had also a just Cause of procuring a Free Parliament to examine this great Affair, and also to obtain it by Force, since it was to be got no other way.

M. I need not further dispute this Business of the Prince of *Wales* with you ; since I durst appeal to your own Conscience, whether you are not satisfied, notwithstanding these suppos'd Indiscretions in the management of the Queen's Delivery, that he is really Son to the Queen : and I think it would puzzle you or I to prove the Legitimacy of our own Children by better Evidence than this has been. And I think all those of your Party may very well despair of producing any thing against it, since the Prince of *Orange* himself has thought it best to let it alone, as knowing very well there was nothing material could be brought

brought in Evidence against him: But I shall defer speaking further on this Head, till I come to consider of the Convention's settling the Crown upon the Prince and Princess of *Orange*. But before I come to this, I have many things further to observe upon the Prince's harsh and unjust Proceedings with his Majesty, and refusing all Terms of Accommodation with him, upon his last return to *London*.

In the first place therefore I must appeal to your self, whether it were done like a Nephew, and a Son-in-law, when after the King was voluntarily returned to *White-Hall*, at the Persuasion of those Lords who went down to attend him at *Feverham*, before he had scarce time to rest him after his Journey, and the many Hardships he had endured since his being seized in that Port; and when he had but newly sent my Lord *Feverham* with a kind Message and Compliment to the Prince, inviting him to *St. James's*, together with some Overtures of Reconciliation, as I am informed; the Prince should make no better a return to all his Kindness, than to clap up the Messenger, contrary to the Law of Nations, as his Majesty observes in this late Paper I now mentioned: and should, without any Notice given to the King of it, order his Men to march, and displacing his Majesty's Guards, to seize upon all the Posts about *White-Hall*, whereby his Majesty's Person became wholly in his power. And not content with this, he likewise dispatch'd three Lords (whose Names I need not mention) to carry the King a very rude and undutiful Message, desiring him no less than to depart, the next Morning, from his Palace, to a Private-House in the Country, altogether unfit for the Reception of his Majesty, and those Guards and Attendants that were necessary for his Security. Nor would these Lords stay till the Morning, but disturbing his Rest, delivered their Message at Twelve a Clock at Night; nor did they give him any longer time than till the next Morning to prepare himself to be gone: and then the King was carried away to *Rocheſter* under the Conduct, not of his own, but of the Prince's *Dutch* Guards; in whose Custody his Majesty continued, for those few days he thought fit to stay there, till his Escape from thence, in order to his Passage into *France*: by which means the Prince hath render'd the Breach irreconcilable between his Majesty and himself: For whereas, if he had come to *St. James's*, in pursuance of the King's Invitation, and had renewed the Treaty, which was unhappily broke off by the King's first going away, there might have been, in great probability, a happy and lasting Reconciliation made between them, upon such Terms as might have been a sufficient Security for the Church of *England*, as also for the Rights and Liberties of the Subject, which you so earnestly contend for; whereas, by the Convention's declaring the Throne vacant, and placing the Prince and Princess of *Orange* therein, they have entail'd a lasting War, not only upon us, but our Posterity, as long as his Majesty lives, and the Prince of *Wales*, and his Issue (if he live to have any) are in being.

F. I confess you have made a very Tragical Relation of this Affair, and any that did not understand the Grounds of it would believe, that King *James* being quietly settled in his Throne, and the Prince of *Orange* refusing all Terms of Reconciliation, had seized upon his Palace, and hurried him away Captive into a Prison; whereas indeed, there was nothing transacted in all this Affair, which may not be justified by the strictest Rules of Honour, and the Law of Nations: for the doing of which, it is necessary to look back, and consider the State of Affairs immediately after the King's leaving *Salisbury*, and coming to *White-Hall*, where one of the first things he did after he was arrived, was to issue out a Proclamation for the calling a New Parliament, which was received with great Satisfaction by the whole Nation; and immediately upon this, the King sent the Lords *Hallifax*, *Nottingham*, and *Godolphin*, to treat with his Highness upon those Proposals of Peace which he then sent by them, and to which the Prince return'd his Answer, the Heads of which are very reasonable, when he did not demand any other Security for himself, and his Army, than the putting of the *Tower*, and Forts about *London*, into the Custody of that City. Now pray observe the Issue of all those fair Hopes; before ever the Terms proposed by the Prince could be brought to Town, the King following the ill Advice of the Popish Faction, instead of suffering the Elections for Parliament-Men to proceed, as he had promised, and as was hoped for by us, all on a sudden he order'd the rest of the Writs for Elections, that were not sent

down, to be burnt, and a Caveat to be entered against the making use of those that were sent already into the Country; and at the same time he sent Order to the Earl of *Feverham* to disband the Army, and dismiss all the Soldiers with their Arms. But I had forgot to put you in mind, that just before this the King had sent away the Queen, with the Prince, into *France*, and that she carried the Great-Seal of *England* along with her; whereby it was plain, the King intended to put it wholly out of his power to issue out any Writs, or pass any publick Act, wherein the Great-Seal should be used: and that this Seal was carried away, appears by its being not long since drawn up out of the *Thames*, by a Fisherman's Net, near *Lambeth-Bridge*, where it's supposed to have been thrown in by the Queen, or some of her Attendants, in her Passage over the Water: And farther, that the King was then resolved wholly to quit the Government of this Kingdom, (at least for the present) appears by his so speedy following of the Queen, within three Days after, stealing from his Palace by Night in a Boat to *Gravesend*, and from thence in a small Vessel to *Feverham*; where how he was seiz'd by the Mob of that Town, and afterwards return'd to *London*, as you have set forth, I need take no further notice.

Now this being a true and fair Narrative of the whole Matter, I shall only offer two or three Questions to your Consideration, and desire you would give me a fair and satisfactory Answer to them: *First*, Pray tell me whether it was not the King's fault, that it was rendered impossible for the Parliament-Men to be elected, by burning of the Writs, and sending away the Great-Seal? *Secondly*, Whether the King by first stealing away, did not plainly confess himself conquer'd by the Prince, and did thereby *Abdicate* the Government? Also by his obstinate refusal to redress the Grievances of the Nation, he forfeited his Crown and all Allegiance from his Subjects, and was not after this to be own'd as King of *England*, either by the Prince of *Orange*, or any body else: and therefore, whatever Treatment he after this received from the Prince, it was not to be looked upon as done to a lawful King, but a conquered Prince; and his Highness might not only justly refuse to treat with him any more as a Crowned Head, but might also have justified not only the taking him Prisoner, but sending him into *Holland*, if he had pleas'd: but instead of this, he only desir'd his removal out of Town, from that Conflux and Influence of those Multitudes of Papists that flocked to him; and by securing his Person, to put it out of their power to play any After-Game, and rally the late disbanded Army, of whom there was at least Twenty Thousand of the *Scots*, *Irish*, and *English*, who would have stood by the King till the last: And therefore the *English*, as well as the *Dutch*, Council about the Prince, did not think it safe for him to come to Town, as long as the King had his Guards about him at *Whitehall*, since they might have been increased to an Army whenever he pleas'd.

And though I grant good Breeding and Manners, especially to Kings, as also Respect from a Son-in-law to a Father, are Duties incumbent upon Princes, as well as private Men; yet when these lesser things stand in competition with their own Welfare and Safety, as also of the whole Nation, for which the Prince was now engaged; if he might, for these Ends, justly require the removing and securing the King's Person, it was no great matter what time of Night he had notice to remove: though this was not done neither with any Design to affront or surprize him, but happened indeed through pure Accident; for when it was resolved that the Prince's Guards should march to *London* and secure *Whitehall*, it was also resolved that the King should have notice to remove. And since it was not thought fit to let him know it till the Posts were all secur'd, the Ways being very deep and dirty between *Windfor* and *London*, the *Dutch* Guards, commanded by Count *Solmes*, could not reach the Town till past Ten at Night; and after that it was near Twelve before the *English* Guards, about *Whitehall*, could be drawn off without fighting: and till that was done, it was not thought at all proper, or safe, to deliver to the King the Prince's Message for his departure. So that indeed it was not from any Design in either the Prince and his Council who ordered it, or of these Lords (who very well understand good Breeding) thus to deliver their Message to him at that time of Night.

But

But tho he was in bed, yet that he was not asleep is very probable, since he had not been above half an hour in bed ; and it is not very likely he should be asleep, when he very well knew in the Evening before of the Arrival of the Prince's Troops about *Whitehall*, and therefore could not be without too much Concern about it, presently to compose himself to sleep.

But as for his Removal from *London*, it is plain that his Highness was so far from owning, or receiving the King in the same Capacity he was in before his Departure, that as soon as ever he heard he was at the Earl of *Winchelsea's*, and about to return to *London*, he sent away Monsieur *Zulestein* with a Letter to let him know, that he desired him not as yet to come to *London*, but to stay at *Rochester* till he himself should come to Town ; but Monsieur *Zulestein* missing of the King by the way, he came in the mean while to *Whitehall* : yet could not but know that his being there was not with the Prince's Consent, since the same Gentleman followed him thither, and there delivered him the Prince's Letter ; so that this second Message by these Lords could be no new thing, or Surprize to him. Yet that his Highness never intended the least Violence towards the King's Person, may appear by this, that he left it to the King's Choice what place he would go to, as also what Guards or other Attendants he would take with him ; when the King refused to take his *English* Guards with him, tho they were offered him. And indeed these *Dutch* Guards that attended him, might, in his Majesty's Judgment, be very well trusted, they being (as well as their Officers) for the most part Papists ; but that the Prince did not intend to detain his Majesty's Person as a Prisoner, may appear in this, That whilst he remained at *Rochester*, none that would were debarred from access to him, and that the Officers and Soldiers of the Guards were ordered to be under his Command, and every night to take the word from him ; and had it not been for the King's commanding a Centry to be drawn off from his usual Post, he could never have gone away without being discovered ; and if he would have gone away at noon-day, I know not who, unless the Rabble, would have hindred him. So that I think it is evident, that this was the civilest and mildest Usage that a vanquished Prince could expect from him that had so much the better of him, and in whose power he now was, and I doubt more than the King would have allowed the Prince, had it been his Fortune to have got him as much in his power : nay, the King was so far from being confined, that it is plain he had the liberty given him to go whither he pleased ; nor were these Guards placed so much about him for his Confinement, as to secure him from the Insults of the Rabble, who otherwise there, as well as they did at *Feverham*, might have expressed too violent a Resentment against his Person.

M. I cannot deny but you have given a very fair, and as far as I know, a true account of this Transaction, and have told me some things which I never heard before ; but however, I cannot depart from my first Opinion, that it was neither honestly nor wisely done of those, who took upon them to advise the Prince to push things to Extremities in this Conjunction: and therefore I impute it chiefly to those *English*, who supposing they had by taking Arms, and joining themselves to the Prince's Party, provoked the King beyond all possibility of Pardon, were resolved to do their utmost to put it out of the King's power ever to call them to an account for it. And tho perhaps his first sending away the Queen and Prince, and then going away himself, in the middle of a Treaty with the Prince, and thereby leaving his Affairs in such Confusion, may seem to deserve Censure ; yet certainly his Majesty is to be excused in a great measure for what he then did : for as he tells the Earl of *Feverham*, in his Letter to him to disband the Army, *That things being come to that extremity*, H. D. p. 92. *that he was forced to send away the Queen, and the Prince his Son, that they might not fall into the Enemies hands*, he was also constrained to do the same thing himself, and follow them, since the Troops of his Army were not to be relied on ; that it was not advisable for him to fight the Prince of *Orange* in the head of them, much less was it safe for him to trust himself in the Prince's power : and sure it was but reasonable that Princes, as well as other Men, should provide for their own Security as well as they can.

But yet I can never believe that his Majesty's first going away was any Abdication of the Government, much less a Forfeiture of his Crown or Royal Dignity, any more than the second : for in the first place it could be no Forfeiture,

D. D.

according to your own Principles, because he had already dissolved the Ecclesiastical Court, and restored the Cities and Corporations to their former Charters and Freedom in Elections of Parliament-men, and put again in Commission all Lords Lieutenants, and Justices of the Peace, who had been before turned out : And if he could not give an entire Redress to all our Grievances by a Free Parliament, it was only because he durst not stay to hold it, since he thought he could have no Security for his Person, the whole Nation being in a manner poisoned and prepossessed against him, by those malicious Artifices of a *French* League, and a supposititious Prince, and that his Majesty had so many unfortunate Disappointments, and so surprizing and unparallel'd Accidents ; part of his Army deserting him, and the rest proving unserviceable, when there were such terrible Disorders in the Kingdom, and all Places were either flaming, or about to take the fire of Rebellion.

So likewise could it not be properly any wilful Desertion or Abdication of the Government, since he was forced to quit it, like the Master of a Ship, who when the Vessel is like to sink, is forced to leave her, and escape in a Cock-boat. And that his Majesty did not act thus without an Intention to return, and again to vindicate his Right, when Opportunity served, appears likewise in that Passage in the above-mentioned Letter, wherein he desires both the Officers and Soldiers of his Army, then to be disbanded, *to continue their Fidelity to him, and to keep themselves from Associations, and such pernicious things.* From whence it plainly appears, he went not away without a Prospect of returning to his Throne when time should serve : and if he left no Orders at all for the Government of the Kingdom in his absence, nor named any Commissioners or Lieutenants to represent him, it was because he thought it to no purpose ; since besides that he could find no body who durst undertake so difficult an Employment, so they that had undertaken it, would have found no body who would obey them ; the Generality of the People, and also of the King's Army, being more inclinable to the Prince of *Orange* than to himself.

Yet however you see, upon his return to Town, the King was so well persuaded of the Prince of *Orange*'s kind Intentions towards himself and the Nation, that I verily believe his Majesty would have yielded to any thing that could in reason have been desired of him. And upon this ground I suppose he writ so kindly to the Prince, and invited him to come to *St. James's* with what Troops he should think fit for his Security ; therefore I must needs tell you again, I think it was a great Oversight of the Prince of *Orange* thus to let slip this Opportunity, by refusing all Terms of Accommodation with the King, and by clapping up my Lord *Feversham*, then seizing the King's Person, and sending him out of Town, to let all the World see he was resolved to treat no more with him. And this being the true State of the Case, it is not your saying that he had forfeited his Crown by going away, and consulting his own Safety, that will convince any unprejudiced Man : for as to your notion of a Forfeiture, that it was not then entred into the Thoughts of the Peers, and others of the Privy Council, appears by the Order they made for sending the Lords *Feversham, Ailsbury, Yarmouth, and Middleton* most humbly to intreat the King to return to *Whitehall* ; so that he was received very joyfully, and with great Acclamations of the common People, as he passed thro the City : and when he came to *Whitehall*, he called a Council, where he made an Order to stop the demolishing and plundering of Houses by the Rabble ; so that he was not only received, but also acted as a King after his return to Town. This being the true State of the Case, I shall not dispute the Point, whether his Majesty and the Prince were in a state of War or Peace, after his return, or what the Prince might have done as an Enemy and a Stranger to the King's Person ; but what might be expected from him as a generous Prince, a Nephew, and a Son-in-law, and one who was bound in Conscience and Honour to consult the lasting Peace and Happiness of the Nation more than his own private Interest, or the Ambition of wearing a Crown.

F. You have made the utmost Defence that I suppose can be brought for the King's first going away ; yet if it be better considered, I doubt it will not serve the turn. I see you are forced to lay the whole blame of the King's Departure in the midst of the Treaty with the Prince, and his refusing to call a Parliament according to his own Promise and Proclamation, upon his want of security

security for himself, the Queen, and Prince, if he had staid; by reason of the failure of Fidelity in his Army, the general prejudice of the Nation against him, and the great Firmness and Resolution there was in the Prince's Army to adhere to him. Now I shall shew you that every one of these were but Pretences, and that the real cause of his Departure was, because he feared to leave the Inquiry into the Birth of the Prince of *Wales*, and the free Examination and Redress of our Grievances, and those Violations he had committed upon the fundamental Constitution of the Government, to the impartial Judgment of a Free Parliament. For in the first place, as to want of Fidelity in his Army, there can be no just excuse for his deserting and disbanding them as he did, without any Pay; since he himself, in his said Letter to the Earl of *Feverham*, expressly owns, "That there were a great many brave Men, both Officers and Soldiers, among them:" And therefore, if he was satisfied of this, he ought to have first sent for all his Officers, both Colonels and Captains, and have examined them how far they would stand by him in the Defence of his Person and Cause against the Prince of *Orange*; and he might have also ordered those Officers to have examined every Regiment, Troop, and Company in his whole Army, how far they would engage in his Defence. And if he had proceeded thus at *Salisbury*, before he fled away in that Confusion to *London*, I have been credibly informed by divers Officers of that Army, that the King might have found above 20000 Men, that would have stood by him to the last Man, in his Quarrel against the Prince; and therefore I impute his going away, as he did from *Salisbury*, to some strange panick Fear that God had cast upon him, and all the Popish Faction about him, since he has been known not to want sufficient Courage upon other Occasions. But tho he had omitted it there, yet he certainly ought to have tried this last Experiment after he came to *London*, rather than have quitted the Kingdom so dishonourably as he then did, and thereby giving the Prince of *Orange's* Friends an Opportunity of seizing or getting delivered into their power all the Garisons and strong Places in *England*, besides *Portsmouth*, in those three or four days time that he was not heard of; besides great part of the Army, that was not disbanded, had in that time gone in to the Prince, in hopes of their Pay and future Preferment. Now that the King might with safety have resided with his Army somewhere about *London*, he himself grants, in his Proposals to the Prince, to this effect: "That in the mean time, till all Matters were adjusted concerning the Freedom of Elections, and a Security of their Sitting, the respective Armies may be retained within such Limits, and at such Distance from *London*, as may prevent all Apprehensions that the Parliament may be in any kind disturbed." Which Proposals being made not long after the King's Arrival at *London*, we may reasonably suppose, that he was then well enough satisfied with the Fidelity of the greatest part, at least of his own Army, to him; and if he were not, he might have been better satisfied if he pleased in the Word and Honour of the Prince. But as for the next Difficulty, the Nation's being poisoned and prepossessed against him; admit it were so, as long as he had a sufficient Army about him (as I suppose he might have had) he need not have feared any thing the People could do. But indeed this was a needless fear: for before the Parliament could sit, it was not the People's Interest to hinder it, or to fall upon the King or his Army when matters were in a fair way of Accommodation; so after the Parliament sat, there would have been less cause of Fear, since the Reverence of that Court would have kept them in awe. But as to the Firmness and Resolution of the Prince's Army, the fear of that was also needless, as long as the King's Army continued as firm to him; and if the Prince's Army had been the first Aggressors, I doubt not but the People would have taken part with the King against them. But after all it was certainly (and you must grant it so) much more safe and honourable for the King to have treated with the Prince, and held a Parliament, with an Army about him, than to have yielded the same things (as you suppose him willing to have done) after his return to Town, when his Army was disbanded, and *London* had received the Prince, and had joined with him, and when almost all the strong places of *England* were in the Prince's power. So that upon the whole matter it evidently appears, that the King chose to trust his own Person, together with that of the Queen and Prince, to a foreign Monarch, rather than he would
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H. D. p. 90.

rely upon the Justice or Fidelity of his own Nation. And notwithstanding all you have said concerning the King's Willingness, you say in the next place, that nothing the King has done in all these Exorbitances he committed, can in any wise amount to a Forfeiture, or Abdication of the Government; not to the former, because the King redressed all our Grievances before he went away. 'Tis true, I grant he redressed some of them, by putting divers things in the same state they were before; yet for all this, the greatest still remain'd unredressed, *viz.* the raising of Mony contrary to Law, and the Dispensing Power, both which (as I have already shewed you at our last Meeting) he never disclaimed, neither took any sufficient Course, by calling a Parliament, to prevent its being exercised for the future; besides his going away, without giving the Prince and Nation any further satisfaction about the Birth of the Prince of *Wales*. All which not being done, I must still affirm, that this wrought a Forfeiture of the Crown, or an Abdication of it, at least by his refusal to hold and govern it according to the fundamental Laws thereof; for he that destroys the Law or Conditions by which he holds an Estate, does tacitly renounce his Title to it, as I shewed you in the Case of a Tenant for Life, aliening in Fee. So that this being considered, as also that the City of *London* and the whole Nation had surrendered themselves to the Prince of *Orange*; and that even the Archbishops of *Canterbury* and *York*, together with the Bishops of *Winchester* and *Ely*, with divers other Earls, Bishops, and Lords then in Town, had sent an Address to the Prince, immediately upon the King's Departure, and sent three Lords and one Bishop with it, desiring his Highness to come speedily to *London*, and to take the Government upon him, having before declared that they would, with their utmost Endeavours, assist his Highness for the obtaining of a Free Parliament: the Prince had no reason, upon the King's Return, to surrender that Power which the Nation, as far as it was able to do without a Parliament, had put into his hands; and that to a King, whom he had very little reason to believe, would use it any better than he had done before.

H.D. p. 92,
94.

But I see you wilfully decline entering into the Merits of the Cause, and arguing the main Point in the Controversy, *viz.* Whether the King was in a State of War or Peace with the Prince upon his Return; for if he were still in a State of War, the Prince might certainly very well justify his clapping up the Earl of *Feverham* (his late Majesty's General) for offering to come within the Limits of the Prince's Quarters without his leave, especially since he was still answerable for doing his Endeavour to disband an Army (a great part of which consisted of Papists and Foreigners, with their Arms in their hands) whereby they might have robbed and spoiled the Countries, or at least have kept those Arms to renew the War again with the first Opportunity: so that certainly it could not be so slight a thing as a bare Invitation to *St. James's*, whither the Prince could have gone without his leave (being now Master of the City) which could so far efface all the Prince's just Resentments, and make him so far confide in the King's Word, as to come to *London*, whilst he remained there with his Guards, and all those Papists and Tories in and about *London* ready to take his part, and rally again into a new Army upon the first Signal.

But as for any Proposals of Peace or Accommodation, which you say the Lord *Feverham* brought with him, I neither know nor have heard of any such thing. 'Tis true, the King says in the said Paper he left behind him, that he had writ to the Prince of *Orange* by the Lord *Feverham*, and also mentions some Instructions he had given him; but what they were, he does not tell us: but sure they were not Propositions of Peace, since it is to be supposed, that the King would not have sent any thing of that consequence, without first acquainting the Privy Council with it before it was sent. But since we hear of nothing concerning them, we may very well suppose there was no such thing; or if there were, his Highness was the fittest Judge whether they were reasonable or not: and if the King had any desire to propose any just or reasonable Terms, whereupon he might have hoped to have been restored again to his Royal Dignity, he had a very fair Opportunity for it, when a great Council of the Nobility were met at *St. James's*, in order to sign an Association, to stand by the Prince in the calling of a Free Parliament: for the King might then, if he had pleased, have made his Proposals by such of the Lords and Bishops as he

he could most confide in, and have conjured all the Peers there assembled to have interceded with the Prince of *Orange* to renew their Treaty with the King, which had been before unhappily broken off; and then if either the Peers had refused to do this, or the Prince had refused to hear them, the King might then (I grant) have had sufficient Reason to declare to all the World, that he was not fairly dealt with. But for him again to go away only upon a Pretence that his Person was under Restraint, when really it was not, plainly shewed, that he had no sincere Design of making an amicable end of those Differences, or really desired to be restored to his Throne by the general Consent of the Nation; but either hoped for it from those Civil Dissensions he expected we should fall into upon his Departure, or else to the Arms of *France*. And this being the Case, I think nothing is plainer, than that the King, both by his first and second Departure, hath obblinately refused all those means whereby the Nation might have been settled, with a due Consideration of his Person and Authority whilst he lived, and of the supposed Prince, when his Legitimacy shall be sufficiently proved, and made out before a Free Parliament. So that since I have already proved that the King had, before the Prince's Arrival, committed so many Violations upon the whole Constitution of the Government, and that these Violations, if wilfully and obstinately persisted in, do at last produce an absolute Abdication and Forfeiture of the Crown it self; I think the late King has done all that could be required to make it so.

But I have forgot to answer one Objection you made, *viz.* that the Peers and Bishops, when they invited the King to return to *Whitehall*, had no notion of this Forfeiture, nor the People of *London*, who, you say, received him with great Joy and Acclamations; and that therefore it is wholly a new Invention. To this I answer, That if the Lords you mention did send this Message to the King, it might be because they were surprized with his unexpected Return, and had not well considered all the Circumstances of the Case, and thereby did more than they could well justify, having before declared, they would stand by his Highness in procuring a Free Parliament, which must certainly be without the King, since he was then gone away, and they had also invited him to come to *London* as well as the City had; and how that could consist with inviting the King thither, without the Prince's Consent, I do not well understand. But it seems they quickly altered their Sentiments, as appears by their presently after subscribing a Paper, in the nature of an Association, to stand by the Prince, without taking any notice at all of the King: and the very day of the King's Departure they met to consider upon the Prince's Speech he had a day or two before made to them, desiring them to advise on the best means how to pursue the ends of his Declaration, in calling a Free Parliament. And within two days after they presented the Prince with their Advice, to call a Convention on the 22d of *January*, which was also the next day agreed to by one hundred and sixty Persons, who had served as Knights, Citizens, and Burgeses in any of the last Parliaments, in the time of King *Charles II.* without taking any notice at all of the King: for tho it was true he was then gone away when the Commons and City, two or three days after, made their Addresses to the Prince; yet when the Peers met both the first and second time on the 21st and 22d of *December*, he was still here, for the King did not leave *Rochester* until the 23d in the morning. So it is plain, it was not their Design to own, or take notice of him any more as King; and that which makes it more remarkable, is, that several of the Bishops, *viz.* the Archbishop of *York*, together with the Bishop of *St. Asaph*, and others, joined with the rest of the Peers in these Addresses; which was a plain sign they all looked upon the King's Power to be now at an end. But as for the Acclamations of the People, or any great Joy in the City expressed upon the King's Return to Town, I doubt you have had a false account of that matter; for I cannot hear that any of the Citizens went out to meet him, or set any Lights in their Windows, tho he came into *London* after it was dark, or that any of the better sort bid him God-speed. I grant indeed there was a great many of what you call the Mob, but more Boys than Men, who followed his Coach, making Huzza's, whilst the rest of the People silently looked on.

M. I cannot deny but you may have given a true account of these Matters, since you may have observed them better than I; yet as you your self have related

lated them, sure the King had sufficient cause to consult his own Safety, and make his Escape as soon as he could: for what could he expect when once the Prince had secured his Person under a Guard, and had refused to treat with him as King; and that also the Peers, and divers of the Bishops had made an Association to stand by the Prince of *Orange*, and had made a fresh Address to him, without taking the least notice of him, as if there had been no such thing as a King in being? I say, what could his Majesty now expect, but either a more close Confinement, or else being taken off privately by Poison, or some other ways, since he could not be forgetful of the King his Father's Saying, *That there is no great distance between the Prisons and the Graves of Princes?* Or admit he had lived till this Convention-State, what could he have expected more, than retaining the bare Title of King, whilst the Prince of *Orange*, or some others appointed by him, had wholly managed the Government at their pleasure? Or else they might, according to your Doctrine, have either declared the Crown forfeited, or else that he had abdicated it by his going away. Or who can tell but they might have again renewed the Villany of 48, and have made him undergo the same Fate with his Father?

F. I grant you have urged the utmost that can be to justify the King's second Departure; and as I would not deny but that he was the best Judge of his own Danger, so were the Prince, Peers, and Commons, together with the City, the best and only Judges we could then have of the true means of our Settlement and Safety: since after so many Breaches that the King had made upon his first Declaration and Coronation-Oath, as also his going from his late Promise of calling a Free Parliament; I cannot see what farther Security he could have given us that he would not repeat the same things over again.

H. D. p. 110. Or admit the Prince had suffered him to continue at *Whitehall*, and to call a third Parliament, what assurance could he have given, that in the end of another forty days we should not have the same Trick plaid us? and then in *March* or *April* have been left in the same State of Confusion we were in in *December*, to the certain Ruin of these three Kingdoms, and *Holland* into the bargain? And then by that time the *French* King might have got ready an Army and a Fleet, and under a pretence of redeeming his Majesty from the Constraint he lay under, and of restoring him to the free Exercise of his Regal Power, have invaded this Kingdom. And I suppose you cannot deny but the King would then have found Papists and High Tories enough to have joined with him in this pious Design: for certainly the Scruples of the High Churchmen would have been the same they are now, the Obligations of the Oath of Allegiance the same, and the supposed Sin of deposing a lawful King the same, tho he had utterly refused to give the Prince and Nation any sufficient Satisfaction. So that then if we had been forced to take Arms, and to declare he had forfeited his Right to the Crown, all these things would have given as great, or rather greater Scandal, than for the Nation to take him at his first Offer; and since he had thus rashly deserted the Throne by a needless Departure, to resolve he should ascend it no more.

Ibid. p. 111.

But suppose (what might also as well have happened) that the Quarrel being renewed, the Prince and his Party had been killed, or expelled the Kingdom by the King, do you think he would have granted us then what he would not grant us now? Would he not, think you, have disbanded his Protestant Army, and have kept only *Irish*, *Scotch*, and *French* Forces in pay, and have every day increased them? What respect can we hope he would ever after this have shewn to our Laws, Religion, or Liberties, when he had now no longer any thing to fear? The memory of what happened after the Duke of *Monmouth's* Defeat (tho effected only by those of the Church of *England*) will certainly never be forgotten by others, whatever you Bigots of Loyalty may pretend or say.

So that for my part I stand amazed to see you, and so many others, scruple submitting to the present King; for if ever Man had a just cause of War, he had, and that creates a Right to the thing gained by it: the King by withdrawing, and disbanding his Army, yielded him the Throne; and if he had without any more Ceremony ascended it, he had done no more than several Princes formerly have done on the like occasions: for the Prince was no longer then bound to consider him as one that was, but as one that had been King of

England;

England; yet in that Capacity he treated him with great Respect and Civility, how much soever the King complained of it, who did not enough consider what he had done to draw upon himself that Usage. But as for your Insinuation, that if he had staid, he might have run the same Fate with his Father, I think it is fuller of Passion than Truth; for besides that the Lords and Commons would never have had the Impudence to have committed such a Villany, the Prince himself, as a Nephew and a Son-in-law, would never have suffered it.

M. Well, God only knows the Event of things, and we ought to judge charitably, and still to hope, that if the King might have been restored upon Terms, he would have been the better for his Affliction, and have amended all those Errors he committed; since he had seen that neither the Nation, nor yet his Neighbours the *Dutch*, would permit him to make himself an Absolute Monarch. I believe he would have been too much afraid of the King of *France*, ever to have made use of his Forces, to have settled Popery and arbitrary Government; and without his assistance, I suppose you will grant it could not have been done, since he plainly found that a Protestant Army would never have joined with him to act in such pernicious Designs: but however, let the worst have happened that could be, I think it had been much better for the Nation to have endured it with patience, than to have done that which was Evil, tho' for the procuring of the greatest seeming Good, tho' for the advantage of our Religion and Civil Liberties. And therefore it had been better for us, in this extremity, to have trusted God than Men, since he always promises to protect those that rely upon him, and strictly perform his Will. And admit the worst that could have happened, God would either have removed those Afflictions from us in due time, or have given us patience to have borne them; since I suppose you will not deny, that God oftentimes brings Persecutions and Afflictions upon a sinful Church and Nation, either for a Punishment for their Sins, or else to give an occasion for those that are truly pious and sincere, to shew their Courage and Constancy in suffering for the Truth, and by withstanding, not by Force, but Passive-Obedience, all the King's illegal and arbitrary Commands, if he should, after his Re-establishment in the Throne, have again renewed his former Courses. These are the only Remedies which we of the Church of *England*, as obedient Subjects to the King and his Laws, must think could have been lawfully taken in this Case.

F. I do not deny but what you say is in the main very pious and honest, were the Case as you have put it; but the greatest part of your Discourse depends wholly upon those old Principles and Prejudices, of the Unlawfulness of all Resistance of the Supreme Powers, and that the King is the only Supreme Power in this Kingdom: both which Propositions I have sufficiently confuted at our third, fourth, and fifth Meetings, and also at our last save one: in which I gave you a true account of the legal Sense of those Oaths and Statutes of King *Charles II.* concerning Resistance, as was also given by the best Lawyers, and most considering Men of the then Houses of Lords and Commons. So that if the means we have used are lawful, both by the Laws of God and Man, I think we are not bound to bring Afflictions upon our selves, but to avoid them all we can; especially when they come evidently attended with the utter Loss and Ruin of what ought to be most dear to us, our Religion, Civil Liberties, and Properties, and that not only for our selves, but our Posterity, who perhaps would never have regained them when they were once lost: of which the *French* Nation is an evident Example before our eyes, who by not opposing the arbitrary Power of their Kings in due time, have fallen into a Government almost as despotick as that of *Turkey*. For when once the common Good of the Subjects ceases to be the main End of the Governours, the Government then ceasing to be God's Ordinance, degenerates into Tyranny: which I think may be always lawfully opposed by a freeborn People, who at first agreed to be governed, not as Slaves but Subjects.

But as for the first part of your Speech, it needs not any long Answer; it first supposes the King might have been again restored upon Terms. Now since it is plain these Terms must have been imposed upon him against his Will, and as necessary Conditions of his Restoration, I would be glad to know who it was should undertake to impose them upon him, and to see them kept when they

had been made, whether the Prince of *Orange* or the Parliament. If the former, I grant indeed he might have made such Conditions with the King, that the Church of *England*, as well as the whole Nation, should for the future enjoy their just Rights and Liberties; but then the Prince must either have trusted wholly to the King's Honour, or else he must have had some strong Places put into his hands for a Security, that the King would not again make the same Violations upon our Laws, Religion, and Liberties, as he had done before. Yet I suppose you will not deny, but that the King might, if he had pleased, have broken them all again, so soon as ever the Prince's back had been turned, and that he had been once engaged in a War with *France*; which could not have been long avoided, considering the necessity there is at this juncture of time for the States of *Holland* (and consequently the Prince as their General) to engage with the Emperor and King of *Spain*, to drive the *French* out of the Empire, and to hinder him from making himself Universal Monarch of *Europe*; which it is plain is the thing he now drives at. But if the Prince should have kept any strong Places here as cautionary Towns, for the King's Performance of the Terms agreed upon, this must have been done either by *English* or foreign Forces: if by the former, this would have been looked upon as inconsistent with their Duty and Allegiance to the King, if he should have commanded them to be delivered up into his hands; since you tell us, the King has the sole Command of the *Militia*, and consequently of all Garisons manned by his Subjects within his Dominions. But if the Forces that should have held these Places had been *Dutchmen*, or other Foreigners, it would never have been endured either by the King or Nation, that Foreigners should possess the strong Holds and Keys of the Kingdom; and the King might soon have wrought (by some Jealousies and Suspicions, which he would not have failed to have raised) that the Nation it self should have joined with him to drive them out, and then the King might have done what he pleased without controul. But if you will place this Power in the whole People or Nation, or else their Representatives the Parliament, of holding the King to these Terms agreed upon, this could not have been done without their constant Sitting, and a power of resisting him, in case he infringed them; and then either they must have given up all their Liberties to the King's Will, or else farewell to the darling Doctrines of Passive-Obedience and Non-resistance. So that, take it which way you will, all imposing of Terms upon the King, either by the Prince of *Orange*, or the Nation, would in a short time have become either unpracticable or insignificant. Nor is your other Supposition any whit truer, that the King would never have made use of the Forces of *France*, to subdue and keep under the People of *England*, for fear he should not be able to get the *French* out again. 'Tis true, this would be a very good Argument to a Prince who was no Bigot, and was not resolved to introduce his Religion by all the ways and means he could; but how near the *French* Forces were to be brought over into this Kingdom the last Summer, is very well known to those who were then in *France*, and saw them upon the Sea-Coast ready to embark: nor was their coming over put off by any other Motives, than that the Earl of S. and Lord G. two of the Cabinet-Council, represented to the King, that it would be the only means to make the whole Nation rise up against him, and join with the Prince of *Orange* as soon as he landed; which I suppose was the only reason that hindered it, for that the *French* King offered to send them, is very certain: Yet it does not follow for all that, but the King might take an Opportunity of doing it another time, and bringing them over in their own Ships, if ours would not do the Business.

And tho I will not affirm that there is any private League with *France*, for the extirpation of the Protestant Religion; yet this much I think may be sufficiently made out, that long ago the King was wholly in the Interest of *France*, as appears by *Coleman's* Letters (whilst he was his Secretary) when Duke of *York*. The first Passage is to Sir *William Throgmorton*, Feb. 1. 167³. You well know that when the Duke comes to be Master of our Affairs, the King of *France* will have reason to promise himself all things that he can desire. The next is to Father *La Chaise*, the *French* King's Confessor, in these words, That his Royal Highness was convinced, that his Interest and the King of *France's* was the same. And whether the Duke, by his Accession to the Crown, has shewed any Alteration in his Inclinations

clinations to *France*, either in respect of Religion or Interest, I appeal to the World.

Nor is your next Supposition less out of the way, that the King could have made use of no Forces but *French* to settle Popery and Arbitrary Government here, as if he had not *Scotch* and *Irish* Papists enough in his Dominions for this occasion. And as for Arbitrary Government, we have found to our grief, that there are too many mercenary Soldiers in the King's Army, who fought only for Pay, and would have assisted the King to have raised Money without the Parliament, nay to pull the very Parliament out of doors if he had bid them; and if some of them were discontented when the Prince came over, I do not so much impute it to their honest Principles, as fear, lest they themselves should be cashiered, and *Scotch* and *Irish* lifted in their rooms. So that upon the whole matter, considering the Temper the King was in ever since his last coming to Town, and that as soon as he arrived, the Priests and Jesuits flocked about him as thick as ever, that they and the *French* Envoy were his chief (if not his only) Cabinet Counsellors, I cannot see (unless he had taken new Measures) how we could have been secure, or could have relied on any thing he could have farther promised, nay swore to perform; since no Oath could be more sacred than that at his Coronation, when he swore to maintain the Church (that is, the Doctrine of the Church) of *England*, and the Laws of the Kingdom; if that be a true account of the form of it, which we have in Print.

M. At this rate of arguing, I know not what to say to you, since this Argument amounts to no more than this, *That the King could upon no account be trusted, and therefore was not any more to be treated with.* If this were so, to what purpose did the Prince of *Orange* declare, that he came not to conquer the Kingdom, but only to procure a free and legal Parliament, which could not be called without the King's Consent, and owning his Authority? Neither could they have done the least Act for the Amendment of our Grievances, without his Majesty's Consent. Or to what purpose did the Prince enter into a Treaty with the King's Commissioners at *Hungerford*, if his Royal Word and Promises were not to be relied on? But if his Majesty could ever be trusted, I see no reason why he could not have been so, as well since his last coming to Town as before, since he came voluntarily; and, as I have great reason to believe, with real Intentions, to grant and perform whatever the Nation could reasonably expect for the Redress of their Grievances; and would have given any reasonable Security of his performance for the future, without divesting himself of his Royal Power of making Laws, and protecting his Subjects.

But as for the former part of your Speech, whereby you would prove it lawful to resist the King, because you say it conduced to the common Good and Interest of the Nation, both as to the Protestant Religion and Civil Liberties; this is no more than the old Commonwealth Maxim in other words: which I grant is true, if the Safety and Preservation of the King or other supreme Powers of a Commonwealth (who, according to your own Principles, are the Representatives of the People, and consequently part of it) be likewise comprehended and maintained (as they ought to be) in their due Power and Authority. For Bishop *Sanderfon*, in his learned Lectures, hath very well proved, that those cannot be separated from each other, without destroying the Civil Government, which is all the Security we have for our Civil Properties and Liberties; and we see in those few days in which his Majesty's Person was withdrawn, when there was no Civil Government in being, that there was greater Infringement of them, both by plundering and destroying of Houses, and spoiling of Parks and Forests in three or four days time, by the Violence and Fury of the Mob, than have been committed by the most arbitrary Kings from the Conquest to this day.

F. You very much mistake me, if you think I maintain that there was never any time after the Prince's Landing that the King might not have been treated withal, and likewise trusted with the Administration of the Government; but then it must have been upon such Terms, as should have secured us for the future from his acting the like, or worse things over again. As in the first place, he should have renounced his Dispensing Power, and that of taking the Excise without Act of Parliament, and levying Chimney-money upon Cottages and

Ovens, directly contrary to Law. Next he should have disbanded his standing Army, and kept up no Forces in time of Peace, besides the necessary Guards of his Person, the number of which should have been agreed upon by Parliament, which should also have sat once every year, or two years at least. And lastly, that in respect of the Church, as long as he or his Successors continued of the Roman Catholick Religion, the Nomination of all Bishops, Archbishops, Deans, with other Ecclesiastical Preferments, which are not in the immediate Disposal of the Lord Chancellor, should have been in the Archbishop and Bishops of each Province; they chusing two, out of which his Majesty should have chosen one, for to supply each Bishoprick, &c. as it became vacant.

And therefore, for my own part, I was so far from believing all Agreements with the King to be unpracticable, that there was no body rejoiced more than I, when upon his Majesty's first return to *London*, he so far complied with the Desires of the whole Nation, as to issue out his Proclamation for a Free Parliament, and that he sent down his Commissioners to treat with the Prince; and I had then great hopes of an Accommodation. But when, instead of this, the King had burnt the Writs for the Election of Parliament-men, and had sent away the Queen and Prince, together with the Great Seal, that no more Writs might be issued, and that before ever the Commissioners could return to *London*, or before any Answer to the Prince's Proposals was given by the King, he had withdrawn himself, and done all he could to get away into a foreign Kingdom; it was then, and not till then, that I saw all hopes of Agreement absolutely desperate. And tho you put a great stress upon the King's last Return to Town, which, you suppose, was with a Design to agree with the Prince in every thing that could be in reason demanded, I can see no cause for your drawing such a Consequence from it; for if he did not look upon himself as safe here before his Army was disbanded, he could not think himself more so, when it was either wholly dissolved, or else was gone over to the Prince. And therefore I have much greater reason to believe, that his Return again to Town was only to comply with the present Necessity, and to wait for a fitter Opportunity to get away, there being never a Vessel then ready to transport him; especially if that be true which I have heard, that the King declared to a Person of Credit, *That the Queen had obtained from him a solemn Oath on the Sacrament, on the Sunday, that if she went for France on Monday, he would not fail to follow her on Tuesday following.* And if this were so, tho he was disappointed in his intended Passage, yet still was he under the same Obligation to the Queen: nor do I see any Transaction of his with the Prince of *Orange*, or with those of the Church of *England*, that can persuade me to believe otherwise; since his long Consultations with the *French* Envoy, and the Priests and Jesuits, could only tend to the taking new Measures for his Departure, or else how he might imbroil us further while he staid, by some faint hopes of new Treaties and Agreements.

But as for the other part of your Answer, whereby you would confute my Notion of the Lawfulness of Resistance, for the Defence and Preservation of our Religion established by Law, as also of our Liberties and Properties; I hope I shall let you see, that it is not I, but your self, who are mistaken in this matter. For first, all Writers on this Subject, and even Dr. *Sanderson* himself, in his Lectures of the Obligation of Conscience, do acknowledge that all Civil Government is principally ordained for the Good and Preservation of the People; and that the Good of the Governours is only to be considered secondarily, and in order to that: which if so, I pray tell me whether the Good and Preservation of the People ought not to be considered in the first place, since the End for which a thing is ordained, is always more worthy than the Means by which it is procured. And therefore I shall freely grant, that as long as the Safety and Interest of the King, and that of the People are all one, and can any ways consist together, and that he makes the Happiness and Preservation of the People to be the main end of his Government; I so far agree with you, that the Good or Preservation of the Prince or supreme Powers cannot (nay ought not) to be separated from that of the People: but when they once set up a separate Interest quite different from that of the People (as all Princes do, who turning Tyrants go about to enslave them) they then cease to be the true Heads of that political Body the Commonwealth; and thereupon
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the Community or People become free, and at liberty, either to oppose or remove these artificial Heads, and to set up new ones in their room. So that since Similies are not Arguments, your Comparison between a Natural and Political Body, hath only served to impose upon your Judgment in this matter; and therefore I affirm that a Natural and Political Body do wholly differ in this point: for in a natural Body, the real Good of the Head cannot be separated from that of the Body, nor the Good of the Body from that of the Head; nor yet can the Body alone judge of the proper means of its own Preservation, nor when it is hurt or assaulted, but by the Head, which is the Principle of Sense and Motion. But in a Political Body it is quite otherwise: for first, the Supreme Powers of a Commonwealth, which you suppose to be Head of this Political Body, do often pursue and set up an Interest quite different from (nay contrary to) that of the Body or People, and that not only to their prejudice, but also sometimes to their destruction. And, secondly, when they do this, the Political Body, or the People will in evident and apparent Cases judge for themselves, let this Political Head say or declare what it will against it, and will when they are thus oppress'd and enslav'd by those that they have submitted to as their Political Heads, and in such cases of Extremity, endeavour to free themselves from the Severity of their Yoke.

M. Notwithstanding what you have now said, I am not yet convinced, that the King had no real Design to redress our Grievances, and to make a final Agreement with the Prince; for tho I do not deny but his Majesty did converse with some Priests, and others of his own Persuasion, as also with the *French* Envoy after his coming to Town, yet might this be for no ill Intent: and he did also converse with divers Reverend Bishops and Lords of our own Religion, to whom he still expressed a great Desire of making an end of all Differences between himself, the Prince, and the whole Nation. And this I suppose is the true reason why the Archbishop of *Canterbury*, (tho he sign'd the first and second Addresses to the Prince, upon his Majesty's first withdrawing himself, yet) has been ever since so sensible of that Mistake he then committed, that he has never appeared or acted in any Meeting of the Peers, nor yet in the Convention. And that his Majesty, even at *Rochester*, did not lay aside all thoughts of Agreement, and making up all Breaches between himself and his People, I could give you another Demonstration, which is not commonly known, and which I had from a particular Friend, *viz.* That the King, during his Confinement there, sent a Lady I could name on a Message to two Reverend Prelates of our Church (together with an Emerald Ring from his Finger, as a Testimony of the Truth of her Commission) to this effect, That his Majesty, being sensible of the sad Condition the Church of *England* as well as himself was in, and that there was no way so likely for him to get out of it, as by granting his Subjects, and particularly the Church of *England*, such Securities for the Enjoyment of their just Rights and Liberties, as they could in reason demand; therefore he wholly left it to the Discretion of those Bishops, to make to the Peers and Bishops that were then to meet suddenly, whatever Proposals they should think reasonable on his behalf, for the Satisfaction of the Church, and Safety of the Nation, and that he would be ready to grant and ratify them whensoever he should be required.

F. This is indeed more than I ever heard before, and can scarce believe: but did the Lady go and deliver her Message? And pray what Answer did those Bishops give to this fair Proposal?

M. Yes, the Lady did deliver her Message, and these Bishops answer'd both to the same effect, That they had a real Duty and Affection for his Majesty, and a great Desire to serve him; but that considering the great Power of the Prince of *Orange*, and his present Aversion to any Agreement with his Majesty, they very much feared that the Peers would not venture to give the Prince any such Advice, or to interpose with him on his Majesty's behalf: which in my opinion was very meanly and cowardly done of them, not considering their Duty to him as a King, and also those particular Obligations they owed him as their Benefactor, and who had been the greatest means of their being raised to those Dignities in his Brother's Reign. Now I desire to know, if this Message had received its intended effect, what greater Demonstration his Majesty could have
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given to satisfy the World that he really intended to set all things right again, had he been permitted to do it.

E. I will not farther question the Truth of this Relation, tho perhaps I might have sufficient reason for it, since you say you had it from a Person of good Credit, and who was privy to this Transaction; nor yet will I be so inquisitive as to know the Names either of the Bishops, or of the Lady, since you make it a Secret: but yet notwithstanding, I do still very much question whether the King did ever really design to do what he then offer'd, and did not intend to put a sham upon their Lorships, to serve his present Occasion, and to see if he could divide the Bishops and Peers of the Church of *England* from the Prince, of *Orange's* Interest: and so by making them offer such Proposals as the Prince should not think fit to agree to, might make them declare against his Proceedings; which would have created great Divisions and Heart-burnings between those of the High Church-of-*England* Party and the Prince; and thereby have involved us again in fresh Disturbances, of which no doubt the King and the Popish Faction were like to receive the greatest Advantage: for you know the old Saying, *Divide & impera*.

But to let you see that I do not speak without just Grounds for my Opinion, let us examine every Circumstance of this matter: First, if the King had meant really, is it likely that he would have trusted a Business of that high moment to a Woman, when he had then the Lords of *Ailesbury* and *Arran*, besides other Protestant Gentlemen then waiting on him, and they were much fitter to be trusted than this Lady, let her be whom she will? Or can any one believe if the King had meant really, that he would not have sent his Proposals in Writing, since he very well knew from the Prince's Declaration, as well as the Bishops Petition and Addresses to him, what the whole Nation, and the Church of *England* in particular, required of him? But forsooth he must send a loose and uncertain Message, which it was in his power to disown whenever he pleased, by saying, the foolish Woman mistook his Meaning; and she also might be so much his Creature, as to take the Fault wholly upon her self, whenever it should serve the King's turn so to do. And therefore I think it was very wisely and honestly done of those Reverend Prelates to refuse meddling in such a ticklish Affair; since it is plain by his not making any such Proposals to the Prince of *Orange* himself, or the Lords about him, that he was not to be made privy to it, but rather it should be carried on, whether he would or no, and without giving him any satisfaction in his particular Concern as to the Prince of *Wales*. And lastly, I desire you farther to consider, whether the King might not hereafter, whenever he had power, have made void whatever Agreements or Concessions he should have then granted either to the Church of *England*, or to the Nation, by pleading afterwards, that they were obtain'd by Duress, whilst he was not *sui juris*, but under the power of the Prince of *Orange*.

I have but one thing more to add, which I before omitted, which is to make some Reply to what you said concerning the mischief that the Mob has done upon Houses, Forests, and Parks, since his Majesty's first Departure: and therefore granting the Matter of Fact, that much Mischief and Spoil has been committed; yet I deny that it is more than has been done by the most Arbitrary Kings since the Conquest to this day, as you are pleased to affirm: for I believe you forget the thirty Parish-Churches and Towns, which our Historian tells us, your *William* the Conqueror, and his Son *Rufus*, destroy'd, when they enlarged new Forests, and therein acted contrary to their Oaths, like true despotick Tyrants. You likewise forget the miserable Spoil and Waste which King *John* and *Henry III.* made upon the Houses, Castles and Estates of the Barons and Gentry of *England*, who opposed them in their unjust and illegal Violations of *Magna Charta*; besides other Tyrannical Actions of the same kind committed by King *Edward* and *Richard II.* too long here to relate. But if these Mischiefs were done you speak of, whom have we to thank for it but the King; who stealing away on a sudden, without leaving any Orders for the Government of the Kingdom, all Persons in Commission, either Civil or Military, doubted whether their Commissions were not at an end by the King's deserting the Government as he did? Besides, you very well know that the common People were so enraged against the Popish Faction, for so many in-

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solent Actions they had committed in King *James's* Reign, and so many apparent Breaches and Contempts of all the Laws made against them, that you cannot wonder, if when they were rid of the Fear of the *Irish*, and of King *James's* Army, they kept their Arms in their hands, and took that opportunity of revenging themselves upon those they looked upon as the Authors of all this Confusion. So that except the rifling of the House and Chappel of the *Spanish* Ambassador, which I grant was contrary to the Law of Nations, there were very few Popish Houses plunder'd or spoil'd, but such as had before render'd themselves some ways or other obnoxious to the Laws, by their Apostacy and accepting of Commissions, which they were utterly disabled by Law to take: and tho to my knowledg the Deputy Lieutenants, and Justices of the Peace, did their utmost in most Counties of *England*, to quell those Riots and Disorders, yet the Mobile were too much enraged, and too numerous to be commanded, when like a vicious Horse, whose Rider is cast off, they run away with the Bridle in their Teeth.

M. I confess you have made the best Apology for the Mob that the matter will bear; and I cannot deny, in comparison of what has been done in other Nations on the like Occasions, it was a very civil Mob: but yet this may serve to let us see the Danger of your Doctrine of Resistance, since by the same Law, by which they then pull'd down and plunder'd the Popish Chappels, and *Roman* Catholick Houses, by the like Right they might have done the same Violences upon any other Nobleman's or Gentleman's House in *England*, whether a Papist or Protestant, that they had a spleen to; since it was but their crying out that he was a Papist, or at least a Favourer of them, and then it had been enough to make them suffer, as if they really had been so: as I could tell you of my own knowledg, of a very honest Gentleman of my Acquaintance, who because he was a true Son of the Church, and had been always a Loyal Subject to his Majesty, and a great Enemy to the Whig Faction in the Country, and had also put the Law severely in execution against the Dissenters, was like to have had his House plundered by the Fanatick Mob of a certain Town, from which this Gentleman's House was not far distant.

F. If you please to consider it, this is a very unjust Inference from our Doctrine; for these Actions were not any Resistance of the Supreme Powers of the Nation, but certain violent Actions or Revenges, which the Rabble thought they might take upon those whom they looked upon as publick Enemies, when there was no Civil or Military Power in being that was of sufficient Strength to keep them in order. But if you please to call to mind my Positions, I do by no means allow the Rabble or Mob of any Nation to take Arms against a Civil Government, but only the whole Community of the People of all Degrees and Orders, commanded by the Nobility and Gentry thereof. And tho I grant the People may be sometimes mistaken in the Exercise of this Right (as what is there, tho ever so lawful, that may not be abused?) yet I think you will grant, that the bare Abuse of a lawful thing is no sufficient Ground for the taking away the Liberty of exercising it; and I think I have sufficiently proved, that the total Denial of this Liberty would be of far worse consequence to whole Nations and Kingdoms, nay to all Mankind, than the allowing of it (as those of my Opinion do) only in cases of extreme Necessity, and when no other Remedy will serve.

M. I will not renew this old Dispute again about Resistance; we sufficiently know one another's Minds about it, and are not, as I can see, like to bring over either of us to the other's Opinion. But since I know you have studied the Common Laws, and Histories of this Kingdom better than I, I cannot forbear making divers just Reflections upon the late Proceedings of the Convention: for tho indeed they had no Legal Authority to assemble upon the Circular Letters of a Foreign Prince, yet since this was the greatest (if not the only Liberty we had left us) and the only Means to procure a Settlement, if it had used that Power as it ought to have done, I will not quarrel or dispute the Legality of their Meeting; but then they must use it only for lawful Ends, and such as in their private Capacities they were obliged to pursue if they were able. Therefore when they assembled, if they would have maintain'd the due Rights of Monarchy and Succession in this Kingdom, sure they ought, in the first place, to have enquired what was become of the King, where

where he was, and who forced him to go away: And when they had known that, they ought then to have join'd in addressing to the Prince, that since he had declar'd that he came not to conquer this Nation, but only to free it from Arbitrary Government, and restore it to its just Laws, there could be no sure Enjoyment of these without the King, therefore he would join with them in sending to him, to desire him to return to the Government of these Kingdoms, and to govern them according to Law. But instead of this they not only neglected taking any notice of the King, as if he were not at all in being, but have also refused to receive those gracious Letters he sent them, in which he promised to amend all former Errors, and to govern according to Law: which certainly deserved to be taken notice of, since coming from their Lawful Prince, they ought at least to have proposed some Terms to him, before they had proceeded to that rash and unparallel'd Vote, which I desire I may read to you word for word, because I intend to examine every Clause of it. Resolved,

That King James II. having endeavoured to subvert the Constitution of this Kingdom, by breaking the Original Contract between King and People; and by the Advice of Jesuits and other wicked Persons, having violated the Fundamental Laws, and having withdrawn himself out of this Kingdom; hath abdicated the Government, and that the Throne is thereby vacant. I shall make bold to consider each of these Clauses, one after another: And therefore first pray take notice, that this Vote of the two Houses cost above a Week's Debate in the House of Lords, which past in the House of Commons in two or three days; because divers of the Lords, as well Temporal as Spiritual, did with great Honour, Reason and Resolution oppose, and protested against it to the last: and it was carried at last by a very small Majority. But that we may examine each Clause in this Vote: first, it is here only said, *That King James II. endeavoured to subvert the Constitution of this Kingdom;* not that he really did it, which is as much lower than you are pleased to put it, as endeavouring a thing falls short of actually doing it: and therefore it is very hard to declare a Prince to have forfeited, or abdicated his Kingdom, for bare designing and endeavouring; since those things that you bring to prove it, may bear a much more favourable Interpretation, especially with Subjects, who are no fit Judges of the private Designs of Princes, which may oftentimes tend to quite other Purposes than what we suppose.

As for the next Clause, *by breaking the Original Contract;* I have heard that divers of the Lords and Bishops, who were for the King against this new Invention of an Abdication, put the other side very hard to it, to make out this Original Contract, and desired them to shew in what part, either of our Common or Statute Law, it was to be found; for they knew no such Maxim in the Common Law, nor no such Clause in any Statute, antient or modern.

And tho I confess you have undertaken to prove to me, that there is such a thing, yet it has been only by far-fetch'd Consequences, and from the old Form of Government among the Saxons, of above 600 Years standing; which if there were any such thing, it is now become so antiquated, and out of date, that neither the King himself, nor yet our Lords, Bishops or Judges, except some few Lawyers of your Kidney, ever before now thought of any such thing. I pass by the next Clause, *by the Advice of Jesuits, &c.* because I cannot say by whose Advice those things, which you call Breaches of the Fundamental Laws, were acted: but as for the next, wherein the Violation of these Fundamental Laws is laid to his charge, I confess you have given me a pretty large Catalogue of these Fundamentals at our ninth Meeting, which yet you cannot say are to be found together in any one Law; but are to be picked up here and there out of *Magna Charta*, and divers other old Statutes. But since the King and Parliament have declared in the first Year of King James I. that there are such such things as Fundamental Laws and Privileges, I will not say there are none; yet certainly any Breach of them by the King was never intended to create a Forfeiture of the Crown: for if it had, I think there would have been but few Kings or Queens of *England*, who would not have forfeited, for some one or more of these Breaches, committed in their Reigns, by the Advice of their Judges and Counsellors, as these were lately
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by the King: for I suppose you cannot expect that Princes should see any otherwise in matters of Government than by other Mens Eyes, nor hear but by other Peoples Ears. And therefore if the wilful Breach of these Fundamentals must cause a Forfeiture or Abdication of Government (call it which you please) methinks it had been reasonable for the Parliament to have given a List of these Fundamentals in some one Law, that the King might have been sure to have avoided the transgressing of them, and fear of losing both his Royal Dignity, and his Penalty ought also to have been declared.

But the next Clause deserves more particular Consideration, (*viz.*) *And having withdrawn himself out of the Kingdom, hath abdicated the Government.* Now I must confess, it is the first time that ever the King's going away, for fear of losing both his Royal Dignity and his Life, and that with a declared Design and Intention to return again to the Exercise of the Government, whenever he might do it with safety, should be judged a wilful Desertion or Abdication. D.D. p. 147. I am sure there is nothing in our Common or Statute Laws, that can at all warrant this Notion; for Common Law is nothing but antient Usage and immemorial Custom. Now Custom supposes Precedents and parallel Cases; but it is granted on all hands, that the Crown of *England* was never judged to be abdicated, by the withdrawing of the Prince, before now: And therefore it follows, by undeniable Consequence, that this Opinion can have no Foundation in the Common Law, because there is not so much as one ruled Case to prove it by.

But if we come to those Precedents we have in our *English* History, I shall give you such of them as I can remember. We read in the Reign of *Edward II.* that when he fled from the Forces of his Wife and Son, who had seized the Kingdom by Force, the King being deserted by his Soldiers and Followers, endeavoured to get into the Isle of *Lundy* for safety; but not being able to make it, was driven back, and taken in disguise at the Abbey of *Neath* in *Wales*. Now it is certain, that King *Edward* went away without appointing any Governour of the Realm in his absence; and if this Notion of an Abdication had been then taken for Law, the Parliament needed not to have been put to their shifts to find out so many other matters for which to depose him. The next is the like case, of *Edward IV.* who when the Earl of *Warwick* had raised a great Army against him on a sudden, and forced him to fly with a few Followers to the Duke of *Burgundy*, his Brother-in-law, though *Henry VI.* was again put into the Throne; yet was it not objected against King *Edward*, that he had lost his Title to it, or that it was become vacant by his deserting it. And if these two are not parallel Cases, and do not reach the matter in hand, I desire you to shew me wherein they differ from the present Case of the King.

But I am come now to the last Clause of all, *That the Throne is thereby become vacant*, which seeming only to refer to the Clause of Abdication, I think I have said enough already against that Notion; therefore we will admit at present, for Discourse sake, that the King had really abdicated the Government, by deserting the Kingdom, and thereby wholly lost his Regal Power. Now according to the Fundamental Laws and Customs of this Realm, which is, you know, an Hereditary Monarchy, the eldest Son, or other next Heir, either Male or Female, immediately succeeds the King his Father, or other Predecessor, and that without any *Interregnum* at all; so that the Reign of the Successor immediately begins from the very moment the last King or Queen deceases. This being the settled Law, I cannot see any one step the Convention has made in their whole Proceeding that can be justify'd by the Fundamental Laws of the Land, or the Laws of Equity and Justice; for Equity has no quirks in it, and never lies at a catch: Reason is always just and generous, Ib. p. 149. it never makes Mens Misfortunes an Accusation, nor judges in favour of Violence; for indeed what can be more unrighteous (tho in the Case of a private Person) than that any one should suffer yet worse for being injured, and be barred his Rights for the Injuries of others? If a Man should forfeit his House to those who set it on fire, only because he quitted it without giving some formal Directions to the Servants, or be obliged to lose his Estate for endeavouring to preserve his Life; I believe it would be thought a strange piece of Justice in any Law whatever: and if this be proved illegal, the Title of

your present King and Queen being wholly founded upon the Validity of this Vote, will prove so likewise.

F. Well, you have made a pretty long Discourse in defence of King *James's* Actions, as well as of his late Desertion, and I have heard you patiently, because I grant you have put a great deal of matter in a few words; and I think all that can be justly urged in your King's defence. I shall therefore begin with the first false step that you say the Convention made, in not inquiring after the Causes of the King's departure, whither he was gone, and their not voting of an Address to the Prince, to desire his Return. As for the first of these, they were not at all oblig'd to do it, since a great many of the Peers and Bishops, and Members who were then in Town, very well knew the Causes of the King's Departure, and that he either went away voluntarily, or at least without any other necessity than what he had brought upon himself, by his own evil Government, or the ill Counsel of others; which may be easily prov'd by several Circumstances: for it is very well known, that above a Fortnight before the King went away, the Lord *D* — and Mr. *Brent* did not stick to declare that it was necessary the King should withdraw himself. So that it is plain the Popish Faction knew of it long before it was done, and that it proceeded wholly from their Advice appears further by a Letter to the King when he was at *Salisbury*, which can be yet produc'd: he was there told that it was the unanimous Advice of all the Catholics at *London*, that he should come back from thence, and withdraw himself out of the Kingdom, and leave us in *Confusion*; assuring him, that within two years or less, we should be in such Confusions, that he might return and have his Ends of us. Now if the King was pleas'd to take such a desperate Counsellor's Advice, and thereupon do all he could to quit the Kingdom, the Cause of his going is too evident, as well as his design of returning, to have his Ends of us (as they phrase it) that is, in plain *English*, to have both our Religion, Liberties, and Properties wholly at his disposal. Nor in the next place needed they inquire where he was, for every one knew he was gone into *France*, to the greatest Enemy of our Religion and Nation, as well as of the Prince; and therefore it had been altogether unsafe and indiscreet for them to have joined in an Address to the Prince for his return: for whilst he was in such hands, what hopes could we have of his returning to us with better (but rather worse) Affections towards the Church of *England* and this Nation, than what he carried with him?

But you say they refus'd to receive his Letters; for my part I do not know that he ever sent any, at least to the House of Commons. I heard indeed, that one of the King's ordinary Servants was at the Door of the House with such a Letter, but that he was so inconsiderable, that no body would receive the Letter, or make any mention of it in the House: and it was very strange, that the King should have never a Friend there, who had so much Courage and Kindness for him, as would take the Letter and move for the Reading of it, tho he had run the risque of being committed for his pains: so that the House of Commons is not to be blamed for not receiving a Letter which was never offer'd them. But as for the House of Lords, I have been told it was mov'd to be read there, but it was carried in the Negative, because it was not brought by a Person of sufficient Credit; and therefore it was the King's fault if he would employ such mean Persons in a matter of that great moment. And indeed if we may give credit to those Copies of these Letters which I have seen, they retain'd rather a Justification of his past Actions, than an Acknowledgment of those Violations he had committed upon our Laws: for as to his promising to govern by Law, there is nothing in that, for he never yet own'd that he govern'd otherwise. 'Tis true, there is in one of those Letters an Expression of his amending *past Errors*; but those are general words, and may mean such Errors, as he had committed in the ill management of his Designs, which he would have mended, whenever he was to do the like things again. This may very well be the true Sense of a Letter, it is very likely, written with the Equivocation of the Jesuits, and Advice of a *French Cabal*.

But you would have him sent for, to return upon certain Terms: I wonder you should be so undutiful, as to urge it; since if he is an absolute King, without any Conditions whatever, he ought certainly to be restored, as King *Charles II.* was, without any Terms or Conditions at all; and rather so, than
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with them, since he cannot give us greater assurances for his keeping them than he has already broke, unless you can suppose, he would give us the Guaranty of the Pope and the King of *France* for their Performance: the former of whom believes, that there is no Faith to be kept with Hereticks; and for the latter, supposing the King and him to pass his word for the Performance of these Conditions, pray consider whether the Bond of two Bankrupts can ever pass for a good Security. And so much for the Letters and Addreses.

I come now, in the next place, to consider your Exceptions against that Fundamental Vote of the House of Commons, concerning King *James's* Abdication of the Government, and thereupon declaring the Throne vacant. To begin with your first Exception, I think it is a very small one, that because this Vote declares the King to have endeavour'd to subvert the Constitution of this Kingdom, that it was very unjust to declare him to have abdicated the Government for a bare *Endeavour*, because we are ignorant of the true Ends of the Actions of Princes. To which I answer, that in this Case, a bare Endeavour ought to be sufficient; if it be so evident, that there can be no dispute about it: for if he had once actually subverted it, the two Houses could never have met to have made this Vote; and if in the case of Kings, the very bare Design or Endeavour to destroy them be sufficient, tho it be never reduc'd into Act, I cannot see why by the same Rule the endeavours of Kings to destroy the fundamental Constitution of a mixt or limited Kingdom should not have the like Construction in respect of them: since according to the Maxim you but now cited (and which I have sufficiently justified) that in all such Governments, the Safety and Preservation of the People (that is, of the Government they have establish'd) is to be prefer'd before that of the King alone, when acting in a direct Opposition thereunto; or otherwise, it would be in the King's power to destroy the Constitution whenever he pleas'd: since according to your Doctrine, the bare endeavouring it would be nothing; and after he had once brought it to pass, it would be then too late to retrieve it.

But that the King did really endeavour thus to subvert the fundamental Constitution, appears not only by his closeting and threatening Members to turn them out of their Places, if they would not submit to his Will in taking off the Penal Laws about Religion, whereby all Freedom of Voting would have been quite taken away: but when the King saw this would not do, he then fell a new modelling of Corporations, and by bringing *Quo Warranto's* against their Charters, to get it into his own power to nominate, or approve of all Mayors, Aldermen, and Common Council Men, who in those Corporations having the sole Elections of Parliament-Men, he would thereby have had the naming of them also in his power. Your next Exception is against their declaring him to have broke the Original Contract between the King and the People; for that you are not yet persuaded there was any such thing, because we cannot shew it you in any Common-Law or Statute-Book, written in expresse words. As for the Statute-Law, I grant there is no such expresse Contract to be found in any Statute; yet doth it not therefore follow, that there is no such Contract by the antient Common-Law of the Kingdom. Now that our fundamental Laws are not all to be found in Writing is no wonder; since it is a Maxim of our Common-Law, that it was not a Law, because it was written, but it was written because it was a Law; for it was a Law when it was only in the Breast and Heads of the King and People of this Nation, without any writing at all: and you your self must grant, that if the Hereditary Succession to the Crown be a fundamental Constitution, it is notwithstanding no where to be found in Writings as I know of, but the contrary is asserted by divers Acts of Parliament. But that there is such a thing as an Original Contract, I shall prove from such a necessary Consequence as I think cannot be denied: for as that Statute of King *James I.* sets forth (which I have now cited) and your self have already acknowledged, there are such things as fundamental Laws (that is, Laws that are as antient as the Constitution of the Government) there must have been also an implicit fundamental Covenant or Contract on the King's part, that he would maintain them without any Violation; and this is that we mean by an Original Contract. And if it were not so, it had been the most foolish and unreasonable thing in the World to require every King to swear before he

was crown'd, that he would maintain the Rights of the Church, and the antient Laws and Customs of the Kingdom. And that this was antiently look'd upon as a renewal of this Original Contract, appears by all our antient Historians, who till the Reign of King *Edw. I.* never give the next Heir the Title of King, but of Duke of *Normandy*, till he was actually crown'd, and had taken his Coronation-Oath: and for this I desire you would consult all our antient Historians since your Conquest, beginning with *Ingulf* and *Eadmerus*, and ending with *Tho. Walsingham*.

But as for your Exception against his violating of the fundamental Law, it is yet more trivial: for you cannot deny that there are such things; and if so, surely a King may violate them if he pleases: and therefore your excuse for the King's Breach of them, because they are not to be found together in any one place, but are to be pick'd up here and there from *Magna Charta*, and other Statutes, makes nothing against the validity or the possibility of his knowing them: for as before they were reduc'd to Writing by those Statutes (which only declare and confirm the antient Common Laws and Liberties of *England*) they existed (as I said but now) in the Heads and Hearts of the King and People; so when divers Kings of *England* by their tyrannical and illegal Practices had made divers Violations of these fundamental Rights and Privileges, there then grew a necessity of new granting and confirming those Liberties, and consequently of reducing them into Writing, which there was not before. And that is the true Reason why *Magna Charta*, and other Statutes, made in the time of *Henry III. Edw. I.* and divers others of their Successors, were made either for their Explanation, or Ratification, according as occasion requir'd; and as several Princes had more or less violated these fundamental Laws of the Government: for before they had so done, there was no need of the Parliament's making, or declaring any Law about it. But if the King would have but read and considered the Articles exhibited in Parliament against *Edward* and *Richard II.* he might easily have seen the Laws all together, that will make a Prince to be declar'd by his Subjects to have forfeited his Crown.

But that King *James* had before his Desertion endeavour'd to extirpate the Protestant Religion, the Laws and Liberties of the Nation, appears by those several Articles the Convention has given us in their late Declaration, which they presented to King *William* upon their declaring him and his Princess King and Queen of *England*, and to which I shall refer you, since it is commonly to be had: you know it consists in the recital of divers things, the Violation of which has been always counted in all Kings Reigns a Breach of the Original Contract.

I come now to the last Clause save one you except against, *viz.* 'That having withdrawn himself out of the Kingdom, he hath abdicated the Government.' Now your main Argument against it is, That the King's Desertion of the Government being only for fear of his Life, or of being depos'd from his Royal Dignity, he could not by his going away be said to abdicate or renounce the Crown, since he went away with an intention to return, and repossess it as soon as with safety he might. To which before I make any answer, I must freely own, that were this the Case as you have put it, I think there would be no great dispute about it; since I grant that a King who is thus forc'd to fly for fear of his Life, ought not to have any such Injustice put upon him. But if you please better to consider it, the Case was quite otherwise: for I have already prov'd that when King *James* first went away, he had then an Army about him, was free, and in his own Palace, and was at that time in actual Treaty with the Prince; nor had *London*, nor any considerable strong Place in *England* then surrender'd it self to the Prince: so that if there was any necessity for his Departure, but what he had brought upon himself by his refusing to call a Parliament, burning the Writs, and sending away the Queen and Child, together with the main Instrument of Government, the Great Seal of *England*; this must certainly be look'd upon as a wilful Forfeiture or Abdication of the Government: and it is from this first going away, that I suppose the Convention dates his Abdication. And tho it is true, after his return to *London* he took upon him to make an Order in Council to stop the further pulling down and plundering Popish Chappels, and Papists Houses; yet was it sign'd by very few of the Council, and almost only by those who had been in some Office or Place of Trust: so that tho he was then own'd by them, yet
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since that Order did only serve to shew his Zeal for the Popish Party, and was never obeyed or taken notice of by those to whom it was directed; and that neither the Prince nor the City of *London* owned him afterwards, since it had already delivered it self up to the Prince, and had as well as the Peers invited him to repair to that City; I cannot see that so slight an Act, as this Order of Council, should be counted a Return to, or a Re-establishment in the Throne: since the King had not only lost the Crown by his wilful Departure, without calling a Parliament, or giving the Prince any satisfaction in the great Business of the pretended Prince of *Wales*, or the Nation, by repairing those desperate Breaches he had made upon our fundamental Laws; but had also lost his Title to the Crown, by being conquer'd by the Prince in open War, as I shall prove more at large another time. So that if you please better to consider this Vote of the Convention, you will find that these words, *had abdicated the Government*, do not only refer to the last Clause of his having withdrawn himself out of the Kingdom, but to every one of the foregoing Clauses, *viz.* "His having endeavour'd to subvert the Constitution of this Kingdom, his breaking the Original Contract, and his having violated the fundamental Laws." So that it is plain, their notion of Abdication was not fixed only in the King's Desertion, or bare withdrawing himself out of the Kingdom, but from his renouncing the legal Title by which he held the Crown, and setting himself up as a despotick Sovereign, and ruling by a mercenary Army: and therefore all that you have said about the King's quitting the Government with a design to return to it again, as soon as with safety he might, is altogether vain; for as he went away because he would not govern any longer as a King by Law, so hath he yet given us no satisfaction that he would not return again to govern worse than he did before, had he an opportunity so to do; that is (as the Letter I cited but now phrases it) *to return, and have his Ends of us*. So that this being indeed the Case, I think I can very well justify the last Clause in this Vote, that the Throne was thereby vacant.

M. Sir, you have spoke a considerable time, and I doubt more than I can distinctly remember to answer as I should: therefore before you proceed to this last Clause of the Vacancy of the Throne, the Dispute about which I foresee may hold longer than upon any of the former; pray give me leave to reply to what you have already said in justification of all the other Parts of this Vote. In the first place I will not deny, but that if the King had once got the power of making Mayors, Aldermen, and other Officers in Corporations at his pleasure, it would have gone a great way towards the making the Majority of the Parliament-men; nay, I likewise grant, that by his dispensing Power he might have made what Papists, or other Persons he pleased, Sheriffs in any County, who might have made such return of Knights of Shires as he should have thought fit: yet I suppose this would not have been to the Subversion of the Constitution of the Kingdom, which I think I have proved to consist originally in the King alone, before any great Councils or Parliaments were instituted.

And as for those Violations of the fundamental Laws and Liberties of this Kingdom the Declaration instances in, I think several of them may very well be justified by antient Precedents and adjudged Cases in Law; and therefore were so far from being Violations, that they are no more than the King's exercising of his due Prerogative. And tho at our ninth Meeting I had not time so well to consider these Matters, as also because I was not then prepared to defend the King's Proceedings, I shall therefore make bold to examine the most considerable of those Articles, which the late Declaration supposes did so highly tend to subvert the Protestant Religion, and the Laws and Liberties of this Kingdom. I shall begin with the first, *viz.* "His assuming and exercising a Power of dispensing with, and suspending the execution of Laws, without Consent of Parliament." Which Power, let me tell you by the way, was not asserted to dispense with all Laws or Statutes whatsoever, but only such as the Subject has no particular Cause of Action in, and where the Damage that may arise by it doth not concern the publick Safety, of which the King is sole Judge, and not any particular Man's Interest. I suppose you cannot but have read that learned and short account of the Authorities in Law, upon which Judgment was given in *Sir Edward Hales's Case*, written by *Sir Edward Herbert*, Lord Chief

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Fol. 11, 12.

Chief Justice of the Common Pleas, in vindication of himself; wherein I think he proves beyond any possibility of a just Answer, that the Dispensation granted to Sir *Edward Hales* to receive a Commission, and act as a Colonel of Foot, was good, notwithstanding his not having received the Sacrament, and taken the Oaths and Test appointed by the Statute of the 25th of *Charles II.* where he first proves from my Lord *Coke's* Authority, that it belongs to the King's Prerogative to dispense with all positive or penal Laws, the Penalty whereof is only popular and given to the King. And to shew you that my Lord *Coke* (who was never counted any great Friend to the King's Prerogative) was not single in this Opinion, he gives you also the Authority of the Year-Book of *Henry* the VIth, where it was owned by all the Judges, "That the King can dispense with all things which are only *Mala Prohibita*, and not *Mala in se*, tho expressly forbid by Act of Parliament; for tho (says the Year-Book) before the Statute, coining of Mony was lawful, but now it is not so, yet the King can dispense with it." So that, say I, if he can dispense with that which is now made Treason by *Edward III.* he may certainly dispense with all other penal Statutes of a less nature.

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But because I grant there is some Difference between common penal Laws, which barely prohibit the doing of some things under a Penalty; and this Act, in which there is also an express Clause of *Non-obstante*, that all Licences or Dispensations, contrary to this Act, are declared absolutely void: yet the said Lord Chief Justice likewise proves, that this Clause of *Non-obstante* is void; and he makes this out, not only from constant Practice in other Statutes of like nature, but also from the Opinions of *Plowden*, and the said Lord *Coke*. 1. As to the Statutes, "There is a Statute of the 23d of *Henry VI.* that no Man shall be Sheriff for above a Year. 2. That all Letters Patents, made for Years or Lives, shall be void. 3. That no *Non-obstante* shall make them good (which shews that the Parliament thought the King could otherwise have dispensed with this Act by a *Non-obstante*.) There is likewise in this Act a Penalty of 200 *l.* and the Party is also disabled from bearing the Office of Sheriff in any County of *England*, and also every Pardon for such Offence shall be void." So that in all respects this Statute answers that of *K. Charles* the Second now in dispute, only in this the Penalty to the Prosecutor is higher, viz. 500 *l.* and the Disability is not only from holding that Office, but any other whatsoever for the future.

Vid. the Year-
Book, 2 H. 7.
T. M.

And yet it was resolved by all the Judges of *England*, in the second of *Henry VII.* in the *Exchequer-Chamber*, upon the King's Power of dispensing with this Statute of the 23d of *Henry VI.* that the King's Dispensation with that Statute was good; and so it hath been held ever since: for it is very well known that the King hath not only exercised this Prerogative of dispensing with this Statute, for divers Sheriffs holding more than a Year, but hath also granted this Office for Life, as appears by the same Case cited by *Plowden* (in his *Commentaries*) between *Grendon* and the Bishop of *Lincoln*, where he expressly says, "That notwithstanding this Statute of *Henry VI.* the King's Grant to the Earl of *Northumberland* to be Sheriff during Life, ought to have a Clause of *Non-obstante*, because of the precise words of the Statute before-mentioned; and with such a Clause of *Non-obstante* the Patent to the Earl was good."

Pag. 502.

Pag. 18.

But yet my Lord *Coke* is more express in his Opinion concerning these Dispensations; for in his twelfth Report he has these words: "No Act can bind the King from any Prerogative, which is sole and inseparable to his Person, but that he may dispense with it by a *Non-obstante*, as a Sovereign Power to command any of his Subjects to serve him for the publick Weal: and this solely and inseparably is annexed to his Person. And this Royal Power cannot be restrained by any Act of Parliament, neither in *Thesis*, nor in *Hypothesis*, but that the King by his Royal Prerogative may dispense with it; for upon the Commandment of the King, and Obedience of the Subject, does his Government consist." And therefore for this reason he allows this Judgment of all the Justices in *England*, in the 2d of *Henry VII.* to have been according to Law, that judged the King's Dispensation, with this Statute of *Henry VI.* to be good; and he also instances in another Statute, in the 4th of *Henry IV.* in which it is ordained, "That no *Welshman* should be Justice, Chamberlain,

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"berlain, &c. nor any other Officer whatsoever, in any part of *Wales*, notwithstanding any Patent made to the contrary, with Clause of *Non-obstante* *licet sit Wallicus natus*:" and yet without question the King may now grant those Offices to *Welshmen* with a *Non-obstante*. And the said Lord Coke, in *Calvin's Case*, tells us, "That the same was resolved by all the Judges of *Eng-Rep. VII. p.* land, (*viz.* in the 2d of *Henry VII.*) that every Subject is by his natural Allegiance bound to serve and obey his Sovereign, &c." And he then proceeds to recite the Statute of the 23d of *Henry VI.* and the Opinion of the Judges above-mentioned, and gives us this Reason for it, for that the Act could not bar the King of the Service of his Subject which the Law of Nature did give unto him. This is there reported as the Sense of all the Judges of *England* in King *James's* time; and therefore since this has been ever the Opinion of the Judges, and a constant Prerogative exercised by the King ever since, I desire you would shew me any Difference, why the King's Dispensation to a Sheriff should be good for the holding of his Office for above a Year, notwithstanding the Statute of *Henry VI.* and yet a Dispensation for the taking or holding any Office or Command Civil or Military, without taking the Oaths and Tests appointed by the 25th of *Charles II.* should be declared a Breach of our fundamental Laws: for I can see no manner of difference between them, since their Preambles set forth the Designs of the Law much to the same purpose, *viz.* "That of making the Statute of *Henry VI.* is the insupportable Damage of the King and his People, Perjury, Manlaughter, and great Oppression." And in the Statute of King *Charles II.* the Mischiefs recited are of a much less nature, *viz.* "For preventing Dangers which may happen from Popish Recusants, and quieting the Minds of his Majesty's good Subjects." So that the Subject of neither of these Acts being *Mala in se*, but only *Mala prohibita*, if the King might dispense with the one, he may certainly do as much with the other for the same reason.

Therefore if this be so, I need not say much against the second Article in the Declaration of the Convention against the King's Proceedings, *viz.* "His committing and prosecuting divers worthy Prelates, for humbly petitioning to be excused from concurring to the said assumed Power." For if by the Opinion of all, or most part of the then Judges, the King's Power of dispensing with this Statute of King *Charles II.* was good, it was certainly much more lawful in dispensing with all other Statutes against Papists and Nonconformists, since they are no more than bare penal Statutes, without any Clauses of *Non-obstante*. And tho I grant that King *Charles's* Declaration giving a Toleration to Papists and Dissenters, by dispensing with all the Acts against Masses and Conventicles, were declared illegal by the House of Commons in the year 1672. and that the King, to get a good Sum of Money, did recal that Declaration; yet it was never declared by him to be illegal, only that it should not be drawn into consequence for the future: and you know an Address or Declaration of the House of Commons alone, was never looked upon as a Declaration of the whole Parliament. And the Opinion of the Judges hath ever been, that no Statute or Judgment of Parliament can bar the King of his lawful Prerogatives (of which this of dispensing with such penal Laws is one) so that it was certainly very undutifully done of the Bishops, not only to deny distributing his Majesty's late Declaration for Liberty of Conscience in their several Diocesses, but also to have the Confidence to give him a Petition, wherein they desir'd him not to insist upon the Distribution and Reading of it, because it was against Law: tho admit it were, being no way contrary to the Law of God, they ought to have obeyed it, since their bare distributing of it had not rendered it the more lawful. So that it being a great Misdemeanor in these Bishops to deliver this Petition, their Commitment and Prosecution at Law for the same was also legal, and what the Privy Council told his Majesty he might well justify: so that if the King was too severe in this matter, they were to bear the blame, and not he.

E. I cannot deny but you have given a just account of the main Arguments made use of by the late Lord Chief Justice *Herbert*, in defence of the King's dispensing Power, and of giving his own Opinion for it; but I think, notwithstanding all that Gentleman has written in defence of it, the King's Declaration of Indulgence, and his Dispensation grounded thereupon, to be both
of

7. E. C. p. 33. of them void and contrary to Law: and for proof of this, I shall first give
 L. 6. C. 14. you the opinion both of Divines and Civilians, concerning this matter. As
 Disp. 1, 2. c. 2. first *Suarez*, in his Learned Book *de Legibus*, saith, "That he hath the
 " Power of Dispensing, *qui legem tulit, quia ab ejus voluntate & potentia pendet.*"
 But *Vasques* another Learned Spanish Casuist holds, that no Prince whatever
 hath a Power to dispense with his Laws according to his Pleasure, or be-
 cause that they are his Laws: nay, he also denies such an unlawful Dispen-
 sation to be valid. But to come to those of your own Faculty, *H. Grotius* says
 De requit. Ind. expressly, *Dispensare, hoc est, lege solvere, is solus potest qui ferenda abrogandaque*
 cap. 2. *legis potestatem habet.* *Puffendorf* affirms, "That none can dispense with a
 De Jure Nat. " Law, but such as have the power of making it." And the very Reason of
 & Gentium. the thing sufficiently shews it, for to dispense is to take away the Obligation of
 l. 1. c. 6. the Law in respect of them to whom it was granted; and whoever takes it a-
 way, must have the power of laying it on, and there is no difference between
 the Dispensation of a Law, and the Abrogation of it: but a Dispensation
 is an Abrogation of it to particular Persons, while others are under the Force
 of it; and an Abrogation is a general Dispensation, that being no more than
 a Relaxation of the whole Law, to those Persons who were bound by it before.
 Therefore if the King have not the whole Legislative Power of this Kingdom
 (as I think I have already proved he has not) he neither can have the sole Power
 of dispensing with Laws.

But to answer your main Argument, that the constant Practice hath been
 otherwise for the space of above 200 Years, and that confirm'd by the Judgment
 and Opinions of all the Judges, and most considerable Lawyers in *England*
 ever since that time: to answer this I say, it is necessary, that I give you a
 short History of the dispensing Power, and the Original of Dispensations,
 with *Non-obstantes*, which are so far from being as old as your Conquest, that
 the first News we hear of them, is from *Mat. Paris*; who expressly tells us,
 p. 810, 811. they were first introduc'd by the Pope, and were afterwards inserted into the
 Ibid. p. 817, King's Patents and Protections, in imitation of them, by King *Henry III.* so
 818. Ibid. p. they were never made use of by any of our Kings to elude Acts of Parliament,
 854, 875. till after the Statute of *Mortmain*, which was made in the seventh of *Edward I.*
 Which first Attempt must needs be illegal, because contrary to *Magna Charta*,
 Ch. 36. which is the first Law which prohibits Alienations in *Mortmain*; and
 was not only sworn to when enacted, but is also confirmed by many after Acts
 of Parliament, and order'd to be observ'd in all points: insomuch that when
 the Clergy petition'd King *Edward I.* for a Relaxation of this Statute of *Mort-*
main, his answer was, that he could not do it, because it was enacted *Com-*
muni Consilio Magnatum suorum, & sine eorum consilio non erat revocandum. And
 I grant that such was the misguided Devotion of those Times, that such *Non-*
obstantes were often obtained, as appears by the Patent and Charter-Rolls in the
 Hen. Knigh- *Tower*, from the eighth of *Edward I.* downwards, abounding with special Li-
 ton, p. 2502. cences to purchase and hold Lands, &c. *Statuto de terris & tenementis in manum*
 in Dec. Scrip. *mortuum non ponendis non obstante.* And yet were not these Licences accounted
 legal, or the Clergy safe in purchasing such Lands, Rents, Advowsons, &c.
 by virtue of them, till it was enacted and ordained in Parliament in the eighth
 of *Edward III.* to this effect; "That if Prelates or other Religious People
 " have purchased Lands, and the same have put to *Mortmain*, and be impeach'd
 " upon the same before our Justices, and they shew our Charter of Licence,
 " and Procefs thereupon, by an Inquest of *ad quod damnum*, or of our Grace,
 " or by Fine, they shall be freely left in peace, without being further im-
 " peach'd for the same Purchase, &c." But *Non-obstantes* with the Statute of
Mortmain having been introduc'd, as aforesaid, tho undeniably illegal at
 first, and gaining afterwards a Countenance from this Act of Parliament, have
 I suppose given occasion to the dispensing with other Acts of Parliament also,
 tho at first they were very rare, and seldom occur in the old Books, but are
 more frequent in the new; and that our Judges and Courts of Justice have
 invented little Distinctions betwixt *Malum in se*, and *Malum prohibitum*, be-
 twixt Laws made *pro bono publico*, and Laws of more private regard; betwixt
 Laws in which the King's Profit and Interest is concerned only, and Laws in
 which the Subjects have an Interest, and are intitled to an Action as the Party
 grieved: yet the Cases that have hitherto come before them judicially, have
 been

O. E. J. pag.
 66. & dein.
 Vid. Mat. Par.
 p. 810, 811.
 Ibid. p. 817,
 818. Ibid. p.
 854, 875.

Hen. Knigh-
 ton, p. 2502.
 in Dec. Scrip.

Chap. 3.

been Questions upon Dispensations granted to particular Persons, to exempt them, *pro hic & nunc*, from incurring the Penalty of such and such a Law; but a Dispensation and Suspension of so many Laws at a lump (as the late Declaration of Indulgence did take upon it to do) has been so far from receiving any countenance from Courts of Justice hitherto, that it has always been a fatal Objection against any particular Dispensation of it; it was such as consequently eluded and frustrated the whole Law, for that such a Dispensation is in effect a Repeal of the Law it self: And therefore in that great Case of *Thomas and Sorrel*, in the Lord *Vaughan's* Reports, where Dispensations with penal Statutes are in some Cases allowed; yet it was then agreed by all the Judges, that the King had no power to suspend a Law for ever.

But to let you see how jealous the Parliament, and in particular the House of Commons, have ever been of trusting the King with an unlimited power of dispensing with penal Statutes, with *Non-obstantes*, appears also by several other Laws of great moment, and in particular from the Statutes of *Provisors* and *Premunire*; and I could shew you from divers Records of Parliament, in the Reigns of *Richard II.* *Henry IV.* and *Henry V.* that they never intrusted the Crown with an absolute power of dispensing with those Statutes but only for a time, as till the next Parliament or longer, as they thought fit. But since I have not now so much time to give you so many Precedents at length, I shall only tell you, that as to the main Instance you rely upon, *viz.* the King's dispensing with the Statute of Sheriffs, at first it was not taken for Law, as appears by several Acts of Parliament, as in the 28th of *Henry VI.* whereby those Sheriffs that had held their Offices for more than a year are pardon'd: likewise in the Act of *Edward IV.* there is a like Statute pardoning those Sheriffs, "who by reason of the late Troubles in the Realm, had held for above a year;" yet nevertheless it confirms all former Acts concerning Sheriffs for the time to come. And this held as far as the 6th of *Henry VIII.* which is long after the Judgment you mention in the Exchequer-Chamber, of all the Justices in *England* to the contrary: for there was then an Act made, "which reciting all the former Statutes about Sheriffs as then in full force, it enacts that the Sheriffs and Under-Sheriffs of the City of *Bristol*, may continue to occupy their Offices, in like manner as the Under-Sheriffs, and other Sheriffs Officers in *London* do, without any Penalty or Forfeiture for the same, the said Acts or any other Acts to the contrary notwithstanding." From all which Statutes I think it sufficiently appears, that neither the Sheriffs of those times, nor the City of *Bristol*, nor the whole Parliament, when that Act was made, did believe the King had power to dispense with the Act of the 25th of *Henry VI.* concerning Sheriffs; for if they had, certainly it had been much easier and cheaper for them to have obtained the King's Dispensation, than to have got an Act of Parliament for it.

M. I believe you may have cited these Statutes right enough, but yet I think they are not sufficient proof against so solemn an Opinion, as that of all the Judges in the Exchequer-Chamber, 2d of *Henry VII.* And whatever the Parliament might have declared in the case of this or that particular Statute, I confess carries some Authority with it; yet ought it not to be countervailed by so solemn a Judgment as that of all the Judges and Lawyers of *England*, together with the King's constant Exercise of this Prerogative, not only since, but before that time, and that without any Question or Dispute with the Parliament about it; as in the Case I have already put of the Statute, that forbids any *Welshman* being an Officer in *Wales*. To which I may add divers other Cases of the like nature, such as the Statute against a Judge's going the Circuit in his own County, as also those Statutes that prohibit the King from granting Pardons to Persons convict, nay condemned for Murder, with several other penal Statutes I could name: for tho the King's hands are tied up by particular Clauses of *Non-obstante*, yet has his Majesty, and his Predecessors, at all times exercised their Prerogative of dispensing in all those Cases, notwithstanding those Acts of Parliament, with *Non-obstantes* to the contrary. And tho I grant you have given me several Precedents of the Parliament's sometimes restraining the King in this Exercise of the dispensing Power; yet they are all, or the greatest part of them, before the beginning of *Henry VII's* Reign, when I grant the Law first began to be settled in this matter. And since the

Judgment of all the Judges in the Exchequer-Chamber is the only Rule of Law we can have in the Intervals of Parliament, and this Case of Dispensations being by them adjudged, and ever since settled and owned for Law, without the least Dispute, I can see no reason we have to question it now.

But as for the Statute of the 6th of *Henry VIII.* which you urge as a Precedent to the contrary since the Reign of *Henry VII.* I think it will not reach the Point in question: for the Act you now cited seems to me no more than a private Act for the Sheriffs of *Bristol* alone, who being it seems afraid to rely upon the King's Dispensations, because they thought them too chargeable to be taken out as often as they should have need of them, did think it a great deal less Charge and Trouble to pass an Act of Parliament to indemnify themselves, which I grant put that matter beyond all dispute. But since this Act of *Henry VIII.* I find no Contest between the Parliament and the King about his Power of dispensing with penal Laws, till the Reign of King *Charles II.* when I grant the House of Commons did address his Majesty, that penal Statutes, in Matters Ecclesiastical, cannot be suspended but by Act of Parliament; as also the last Address of the House of Commons in 1685. against the King's dispensing with the Officers of the Army, their holding Employments without taking the Oaths and Test according to the Act, whereby they were appointed. But these being only against the King's Power of dispensing with Laws Ecclesiastical, as concerning Liberty of Conscience, can no ways be extended to their excepting against the King's Power of dispensing with divers other penal Laws (I will not say all) which have *Non-obstantes* in them.

F. Since I see not only your Opinion, but also that of most of the Judges and Lawyers of *England*, concerning this matter of the King's Dispensations with penal Laws, has been chiefly (if not only) founded upon that Opinion of all the Judges in King *Henry VII.*'s time, give me leave to examine the validity of that Judgment; for if that can be proved not to have been according to Law, or else never given at all, I suppose you must grant that my Lord *Coke*, and all others who have founded their Opinion upon this adjudged Cause of *Henry VII.* were mistaken.

J. E. C. p. 43. Now pray give me leave to argue a little with you in point of Reason: If a *Non-obstante* from the King be good, when by Act of Parliament a *Non-obstante* is declared void, what doth an Act of Parliament signify in such a Case? Must we say it is a void Clause? But then to what purpose was it put in? Did the Lords and Commons, who drew this Act of the 23d of *Henry VI.* as also those Acts concerning Sheriffs, understand this Clause of *Non-obstante* to be void when they put it in? If it were so, and contrary to the King's Prerogative, why did the King pass this Act without any Refusal or Protestation against it? Certainly it was then thought otherwise, and if so, we have the Authority of the two Houses of Parliament against the Opinion of the Judges. But if it were not a void Clause then, how came it to be so afterwards? Pray say what Alteration has been made in the Laws of *England* by Act of Parliament as to this Point, since the time that these Acts have been made; for if not, how comes a Clause that had force in 23 *Henry VI.* to have none in 2 *Henry VII.*? Could the twelve Judges in the Exchequer-Chamber, by giving their Opinions, destroy the force of an Act of Parliament?

M. I do not say they can, only I affirm with my Lord *Coke*, and all the Judges, "That no Act can bind the King from any Prerogative which is inseparable from his Royal Person, but he may dispense with it by a new *Obstante*, as a Sovereign Power to command any of his Subjects to serve him for the publick Weal." Nor can this Royal Power be restrain'd by any Act of Parliament: And upon this ground it is that my Lord *Coke*, in the 12th Report (from whence I have taken this Conclusion) maintains, that such Dispensations made by Sheriffs are good; and upon the same ground the Dispensation lately granted by the King to Sir *Edward Hales*, and all other Popish Officers and Ministers, as well Civil as Military, must be also good.

F. But admit I shew you that there was never any such Judgment in the Exchequer-Chamber, in the 2d of *Henry VII.* as my Lord *Coke* and late Lord Chief Justice *Herbert* suppose; will it not then follow, that all their Arguments, that are wholly founded upon this Statute, will fall to the ground?

M. Yes,

M. Yes, indeed, that will be something; but how will you prove that? Can you believe so many learned Judges should be mistaken in this matter, and those of your Opinion only should make this Discovery?

F. I do not desire you should believe me, but your own Eyes, and therefore look upon the Year-Book it self. Here you see that it is indeed so far true, that all the Justices were of Opinion, that the Grant of the Sherifffdom of the County of *Northumberland*, to the Earl of that County for Life, was good, but do not tell us all the Reasons whereon their Judgment was grounded; tho it seems to have been because the Sherifffdom of that County had been commonly granted for Life, before this Statute of *Henry VI.* was made, as appears by these words in the Year-Book: *For it (viz. a Sherifffdom) is such a thing as may be well granted for Term of Life, or Inheritance, as divers Counties have Sherifffs by Inheritance, which began by the King's Grant.* Then was shewn a Resumption (*I suppose it meant an Act of Resumption of the Sherifffalty*) as appears by the following words; and then was shewn a *Proviso* for it, *Count. de N.* and if so, the King had a Right to grant it only for Life again. But none save *Radcliff* (one of the Barons of the Exchequer) cites the Statutes of the 28th and 42d of *Edward III.* against Sherifffs holding for above a year; but he doth not cite this Statute of the 23d of *Henry VI.* at all. Nor doth he, or any other of the Judges, nor the Court, ground their Opinion upon any *Non-obstantes* expressed in the said Acts; for if you please to consult them, you will find there is no Clause of *Non-obstante* in any of them, before the 23d of *Henry VI.* which is not at all mentioned here: therefore I wonder how *Fitz-Herbert*, in his *Abridgment*, comes to vary so far from the Year-Book, from whence he must have took it, as to make the Judgment to have been grounded upon the *Non-obstante* in that Statute of *Henry VI.* for none but *Radcliff* speaks any thing of the Patent's being good with a *Non-obstante* to those Statutes; and the Court, in all the rest of the Case, agree the Patent to be good, by reason of the said *Proviso* in an Act of Resumption, and then fall into Debates concerning the other Point, how this Patent was to be understood.

Vid. 2. H.VII.
Ter. M. Cal.
20. fol. 66.

M. I must confess if this be so, as it seems to be *prima facie*, I wonder my Lord *Coke*, and other learned Lawyers, have laid so great a stress upon, and drawn so many Arguments from this Judgment of the Judges; tho I must needs also tell you, that tho only *Radcliff* insists upon the *Non-obstante*, yet since the rest of the Judges did not contradict him, it seems to me that they all concurred with him; since, according to the Proverb, *Silence often gives Consent.*

But this much I suppose you cannot deny, that ever since *Henry VIIIth's* time at least, Sherifffs have been frequently continued for above a year, and the Judges have been also dispensed with to go to the Circuit in their own County; and *Welshmen* have been commonly made Judges and other Officers in *Wales*, by virtue of the King's Dispensations, notwithstanding the particular Clauses of *Non-obstante*, in the Statutes of *Richard II.* *Henry IV.* and *Henry VI.* by which they are expressly prohibited.

F. I do not deny what you have now said as to matter of Fact, only let me tell you, I conceive that the Reason why the King has taken upon him to dispense with those Statutes you mention, was, because the Causes for which they were first made, have long since ceased. For when those Statutes against Judges going the Circuit in their own Counties, and Sherifffs holding for above a year were made, both the Judges and Sherifffs were found (the one by going their Circuits in their own Counties, where they had great Interest and Acquaintance) to have too much awed the common Juries; and the other (by their great Estates and Commands in the Country) to have made partial Returns of Juries, and also by their long Continuance in their Office, to have learnt a Trade of oppressing the People. So when by the stop that was put to those Abuses by these Statutes (you have mentioned) there was no need of a strict Observation of these Laws; and also when after the Civil Wars between *York* and *Lancaster*, and all things became settled under King *Henry VII.* (who was of a *Welsh* Family) there was then no more need of observing the Statute of *Henry IV.* against *Welshmens* bearing Offices; especially after the Statute of the 27th of *Henry VIII.* when *Wales* became incorporated with *England*, and had by that Statute a Right conferred upon it, of sending Members

to Parliament, tho the Parliament might not think fit, or at least forgot to repeal them: and yet finding that the Kingdom receiv'd no Prejudice, but rather Benefit by such Dispensations; and not caring to quarrel with their Kings, for sometimes using a Prerogative by which they were rather benefited, than grieved; those Dispensations have ever since passed, without any complaint in Parliament: which would certainly have been before this time, had they found the same Grievances and Reasons to have still continued for the strict observance of those Laws, as there were at first for the making of them. Tho if they will have my private Opinion, I think it had been much better, for avoiding all Disputes between the King and Parliament, as also for preventing the evil use that has been made of those Precedents, to advance the King's Prerogative to what height he pleased; rather to have repeal'd all those obsolete Statutes, than to have suffer'd them still to continue.

But to let you see that the distinction of *mala in se*, and *mala prohibita*, often fails, I think I can prove it to you by divers undeniable Instances: for there are divers things which are not *mala in se*; that is, neither Natural nor Moral Evils, either by Common or Statute Law; and yet being declar'd common Nufances, are only *mala politica & introducta*, which the King cannot dispense with at all, only because they are prohibited. Thus the King cannot dispense with the least Nufance to the High-ways, as by laying Dung in them, or the like; tho Men may very well pass through them for all that. So likewise by the Statute of the 18th of King Charles II. the bringing over of *Irish Cattel*, is declar'd a publick Nufance, and therefore the King cannot dispense with it; yet no Man will say it was so before that Statute was made: and therefore it was well observ'd by the late Chief Justice *Vaughan*, in that Case of *Thomas and Sorrel* I now mention'd, that publick Nufances are not *mala in se*, but *mala politica & introducta*. And when a thing is said to be prohibited by the Common-Law, the meaning is no more, but that the antient Record of such a Prohibition is not to be found.

M. I grant indeed the Author you have now cited in that Case, very well restrains the King's Prerogative, as to things that concern the Right or Property of others; and therefore the King cannot pardon the Damage done to particular Persons, where the Suit is only the King's: but for the Benefit and Safety of a third Person, if he dispenses with the Suit, it must be by the consent and agreement of the Party concern'd. And again, penal Laws, the Breach whereof is to any Man's particular Damage, cannot be dispensed with; and the Chief Justice *Herbert* himself owns, that the King cannot dispense with Laws which vest the least Right of Property in any of his Subjects.

F. Very well then, we see the Prerogative is bounded where the Interest of particular Persons is concern'd: But doth the Law take more care of them, than of the publick Interest, and the Concernment of the whole Nation? And this Act against Papists holding Employments was certainly made *pro bono publico*, to prevent the danger that may happen from Popish Recusants, who were before prohibited by divers Statutes to hold any Offices or Employments, before they had taken the Oaths of Supremacy and Allegiance. Therefore I cannot see how such a Dispensation can be good, the Breach whereof must tend so much to the danger of the Commonwealth; if, according to the Rule you have laid down but now, no Law can be dispensed withal, that is for the Benefit and Safety of a third Person, or where the Breach thereof is to other Men's particular Damage. Now certainly whatsoever is prejudicial to the publick safety of the Commonwealth, must be also prejudicial to the safety of every private Person, and the Breach thereof does tend to each Man's particular Damage in the Nation, if they are once generally dispensed with.

M. I grant this is the most natural Objection you have made, against the King's Power of dispensing in this Case: but my Lord Chief Justice *Vaughan* in the Case already cited, answers this Objection very well: No offence, says he, against a penal Law could be dispensed with, if the reason of not dispensing were because the Offence is *contra bonum publicum*; for all Offences against penal Laws are such: and tho such Laws are *pro bono publico*, they are not Laws *pro bono singulorum populi* (which are the Laws which the King cannot dispense with) but *pro bono populi complicati*, as the King in his discretion shall think fit to order them for the good of the whole. In this Nation the Estate of every

Vaughan's:
Rep. f. 358.

F. 333, 334.

F. 29.

P. 341, 342.

every *Pater-familias* may be said to be *pro bono communi* of his Family, which yet is only at his discretion and management; and they have no Property in it, tho they have Benefit by it. And therefore it is but reasonable, that as to the *bonum publicum singulorum* the King should not dispense, because every Man hath a particular Interest in it, and they are Judges of it themselves: whereas in those Acts that are *pro bono populi complicati*, as these Acts of Sheriffs, and for taking the Oaths and Test are, the King is the sole Judge in what Cases they concern the publick good of the Commonwealth, and where they do not.

F. I confess this is a subtle piece of Learning; but pray let us take it a little out of these *Latin* Terms, and then the meaning of it is no more than this, That the King can do nothing to the prejudice of the People in their private Capacities, but he can do what he will with the Publick. I thought indeed a Prince had been in the first place bound to regard the Good of the Publick, and to take care of the *salus populi complicati* (as you call it) that is, as they are imbodyed together, above the private Good or Interest of particular Men, which you call *bonum singulorum populi*; which can never be preserved, but where the Laws and Statutes ordain'd for the publick benefit and security of the Commonwealth have been generally broken and violated by common and easy Dispensations, and have been abused to that degree, that we lately saw a Popish Lawyer, who was thought any thing fit to be a Judge, might sit upon the Bench, upon the Lives and Estates of Protestants; every Deputy Lieutenant, Justice of Peace, or other Officer, either Civil or Military, might be sure of being prefer'd, if he either was a Papist or Fanatick; every Minister or Parson of a Parish, who would renounce the Orders of the Church of *England*, might hold his Living without doing any of the Spiritual Functions; and all this by virtue of these Dispensations, grounded upon the distinction of the publick Good of the whole People taken together, as different from that of the publick Good of each particular Person.

But it seems strange to me that our Ancestors should take such care of the Laws concerning the Measures of Bread, Drink and Flesh, as that the King cannot dispense with them, because they respect the common Good of the whole People, and of every particular Person; but as to the Laws which concern the publick Good of the whole Nation in general, they were content to leave them to the sole Will and Pleasure of their Prince. No one that reads the History of our Ancestors, and the Contest they had with their Kings to obtain these publick Liberties, could ever entertain such a thought concerning them. But that the Laws concerning the Oaths and Test, are not only for the publick Good of the Commonwealth, and that the King is not the sole Judge when they may be dispensed with, appears plainly by this, that the Law for taking the Oaths and Test, has given every particular Person a Right to prosecute any one that hath acted contrary to it, and the Penalty of 500 *l.* is given wholly to the Prosecutor: which shews plainly, that the Intent of the Law was to make it every Man's particular care as well as benefit to see it observed; and consequently since every particular Person has an Interest in it, it cannot be dispensed with by the King.

M. Since it grows late, I shall not further dispute this Point with you, of the King's Dispensing Power, tho I had a great deal more to urge in defence of it; for notwithstanding all you have said against it, it is now counted so inherent a Prerogative, and in many cases so necessary for the Benefit of the Subjects, that the Convention it self, after a great deal of dispute about it, tho they had condemn'd the King for assuming and exercising a Power of dispensing with, and suspending of Laws without consent of Parliament; yet in this very Declaration, when they assert their antient Rights and Liberties, they only declare, "That the pretended Power of dispensing with Laws, or the Execution of Laws, by Regal Authority, as it hath been assumed and exercised of late, is illegal:" which shews that they do not go so high as you, who seem to be absolutely against any such thing.

F. You very much mistake me if you say so: for tho I maintain that antiently, till about the middle of the Reign of King *Henry the Third*, there were no Dispensations at all, either because they were not thought necessary, or else that Penal Laws were not then multiplied to that degree they have been since; yet seeing they have been now so long in use, and do (I grant) often

often tend not only to the Benefit of the King, but also of the Subject, I do no ways condemn them, provided they are restrain'd within those due Limits prescribed by the late Chief Justice *Vaughan* in the case above-mention'd; and that they do not tend to the common Mischief and Ruin of the Protestant Religion establish'd by Law, and the Rights and Liberties of the Subject. Nay, I grant in times of necessity, as in the coming over of the Duke of *Monmouth* (for example) the King might perhaps justify the granting Commissions to Popish Officers, and therefore the Parliament did very well to offer the King to prepare an Act to indemnify them from the Penalties they had incurred by acting without taking the Test: So that when the King utterly refused this reasonable Proposition, and chose to dissolve the Parliament, rather than he would permit them in the least to question this usurped Power, what could be farther expected, than that he was resolved to execute that, as well as all other Dispensations, whether the Parliament would or not, as we afterwards found he did?

But admitting he really had been endued with this Prerogative, yet was it still under a Trust not to abuse it so notoriously as he did, by granting it to every Apostate Person, Officer, or Judge, that required it; and I doubt not but if he had govern'd a little longer, we might have found it granted to Bishops likewise, as soon as he had thought fit to make them of his own Religion: for tho the King (for example) has an undoubted Prerogative of pardoning Robbers and Highway-men, yet if he should so far abuse his Prerogative as to pardon every Robber that was taken, I leave it to you to consider, whether such a Government could long subsist. I shall not apply this Case to these Dispensations, because they say Comparisons are odious.

These things being apparent, I think it would be very easy to vindicate that Clause in the Declaration concerning the Bishops, if the King's Declaration was unlawful (as certainly it was) not only by reason of the Dispensing Power (we have been now disputing about) but also for one main Clause in it, which I have yet but lightly touched; which is this: "We do likewise declare, it is our Royal Will and Pleasure, that from henceforth the Execution of all, and all manner of Penal Laws in matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion establish'd, or for, or by reason of the Exercise of Religion, in any manner whatsoever, be immediately suspended, and the farther Execution of the said Penal Laws, and every of them is hereby suspended." So that by this Clause in the Declaration, not only the Laws of our Reformation, but all the Laws for the Preservation of the Christian Religion in general were suspended, and become of no force; since every Man might not only chuse whether he would come to Church or not, but also all Priests and Ministers were hereby indemnify'd from either praying or preaching in the Churches, as well as their Parishioners freed from hearing them: So that not only all the Laws of our Reformation were at once suspended, but those of Christianity it self by these words, (*or for, or by reason of the Exercise of Religion in any manner whatsoever*) nor is it confined to the Christian Religion, but all other Religions (even *Mahometanism* it self) were thereby permitted.

But perhaps it may be urged, that the Execution of the Law is only hereby suspended, and not the Law it self. But this is a mere Evasion; for what is the external Obligation of any Law, but its Execution in order to Obedience? which if it be once taken off, there can only then remain the naked internal Obligation *in foro conscientia*; and with how few this is of any weight, you understand so well, I need not tell you.

So that by this Declaration the King took upon him to suspend above forty Statutes at once concerning our Religion; and if he could do so, I desire to know whether he might not the next Week have suspended forty more, even concerning our Civil Properties likewise; and so might have proceeded till he had suspended all the Laws in the Statute Book. Nor are those Laws suspended for any limited time, but during the King's Pleasure; and this not only a bare suspension for a time, but in effect a downright Abrogation of them: For what is an Abrogation of a Law, but the taking away the Force of these Statutes, without any time limited? And if this be not to usurp the sole Legislative Power,

Power, I know not what is; and if this were once commonly put in practice in effect in all Cases, Acts of Parliament would signify nothing, and the Legislature would be wholly in the King: this was so evident, that it was granted by one of the Judges at the Trial of these Bishops. Mr. Justice
Powell.

This being the Truth of the Case, I cannot see wherein the Bishops that presented this Petition to his Majesty acted at all undutifully towards him, as you suppose; for being by the King's Order in Council commanded to distribute this Declaration to their inferior Clergy, which they knew in it self to be unlawful, their Distribution of it would not only have been looked upon as the owning of an unlawful thing, but would also have drawn the inferior Clergy into the same Snare; who if it were unlawful, ought not to have publish'd to their Parishioners a Licence to act directly contrary to Law: and therefore the Bishops were not only under the Obligation of that dreadful Charge and Imprecation, express'd in the Statute of Uniformity, in the first of Queen Elizabeth, if they did not endeavour the utmost execution thereof through all their Diocesses and Charges; but being also pressed upon to distribute it contrary to their Consciences, what could they do less in order to excuse themselves from this unlawful Command, than privately to tell the King the reason of their Disobedience; and also humbly to petition him not farther to insist upon it, either in respect of themselves or their inferior Clergy? And you know that it was allow'd by your Civil Law for any Judge, or *Prator*, *rescribere Principi*, if he were by him commanded to act contrary to any former Law or Edict of the Emperor. Chap. 2.

M. I will not deny that, but yet methinks the Bishops in this case would have acted more respectfully and discreetly, if they had forbore petitioning; and though they had refused to obey the King's Declaration, yet needed they not to have declared against it till the Parliament met, when I grant they might freely and safely have done it: or else if they would have petition'd at all, it should have been in more dutiful and respectful Terms, than by telling the King that his Declaration was illegal, and that they could not in Prudence, Honour or Conscience, so far make themselves Parties to it, as to distribute it: and it was this alone which was looked upon as seditious, and for which his Majesty thought fit to have them indicted in the King's Bench, as a matter of high Misdemeanour.

F. I confess you have said in short the Sum of what was urged against them by the King's Council at their Tryal, but all this was very well answer'd by one of the Judges themselves; first, That it would have been too late to have stayed for a Parliament, because the Declaration was to have been distributed by such a time; neither could they have acquiesc'd under it and submitted, for that would have been to run into a contempt of the King's Command, unless they had also shewn the Reasons why they could not obey him: and since this could be done no other way than by Address or Petition, what other Reasons could they give, but that they thought it had been more than once declared illegal in Parliament; and therefore *that they could not in Prudence, Honour and Conscience obey it?* Not in Prudence, because they were liable to answer it in Parliament; not in Honour, because it is unworthy the Character of Bishops and Lords of Parliament to act any thing that may make them look like Flatterers or Time-servers; not in Conscience, because of the Imprecation they lay under by the Act of Queen Elizabeth; as also because no Man can with a safe Conscience give his Approbation to that which is contrary to Law.

And therefore I must needs tell you, that it was very severely and unjustly done in the King to give up this Petition (which was deliver'd him with all the Privacy imaginable) to the Privy Council, in order to have the Bishops prosecuted for it; but which made a great deal more noise and heart-burning against his Government, to commit them Prisoners to the Tower, and then to bring them to their Tryal, and prosecute them with the utmost Rigour; where though they escaped Punishment, yet was it no thanks to the Prosecutors, but to the Directions of the Judges, two of whom (for their Honour) differ'd from the late Lord Chief Justice and his Popish Companion; as also to the Honesty of the Jury, who found them not guilty.

M. I cannot deny but you have given a pretty fair account of this matter, and I cannot but own, that it was one of the worst-advis'd things that happen'd under

under the King's Government; but I cannot impute this to his Majesty's innate Disposition, which was wont to act with greater Temper and Moderation towards those who differ'd from him in Judgment, and therefore must impute it wholly to the wicked Instigations of Father *Peters*, and the other Popish Ministers.

But as for divers other Articles mention'd in the Convention's Declaration; "Such as the issuing out, and causing to be executed a Commission under the Great Seal, for erecting a Court, call'd *The Court of Commission* for Ecclesiastical Affairs, and levying Money for, and to the use of the Crown, by pretence of Prerogative, for other time, and in other manner than the same was granted by Parliament:" with all the rest of the Articles in that Declaration relating to Civil Affairs; since they are to be looked upon as the sole Acts of the Judges, and not of the King, they, and not he, ought to suffer for the Illegality of them; since, as you your self have own'd, the King in his judicial Capacity can do no wrong, that Power being wholly committed to his Judges: and therefore it was very hardly, nay unjustly done, to lay this to his charge, which he is not to answer for; so that if any thing has been done amiss in this kind, they are to answer for it, and not to run such things up to a Forfeiture or an Abdication, as your Convention have done.

F. I need not say much more to this Objection, because I have in great part answer'd it already, and prov'd that most of the things found fault withal, were the King's own Acts, as well as those of his Ministers and Judges; for as to the Commission for Ecclesiastical Affairs, which is directly contrary to the Statute of King *Charles I.* which took away the Court of High Commission, as also to a Clause inserted in the Act of the 13th of *Charles II.* "wherein the Act for taking away that Court is not only confirm'd, but also the erecting any other like Court by Commission is expressly forbid:" This being the case, the fault of the issuing out of this Commission cannot be laid upon the Judges; who though some of them acted in it, yet was it never formally brought before them to determine whether it was illegal or not: and no Man can imagine, that unless the King had a passionate Desire for this Power, that he might thereby be able to suspend, deprive, and turn out whom he pleased of the Bishops and inferiour Clergy, with the Heads and Fellows of Colleges, whom he should find the most irreconcilable Enemies to his Religion, or obstinate in refusing to obey his illegal Commands, as too plainly appear'd by the Suspension of the Bishop of *London*, the turning out of the President and Fellows of *Magdalen-College*, and that Prosecution that was lately order'd against all those Bishops and inferiour Clergy who had refused to distribute or read the King's Declaration; though I confess there was a stop put to this, upon recalling this Commission, immediately before the Prince's Arrival.

So likewise for the other Article, of levying Money contrary to Law, that was done also without any Opinion of the Judges at all demanded about it; for the illegal Collection of Chimney-Money, by making Cottages and Ovens pay, that were expressly exempted by the Acts concerning it; and also the illegal levying of Excise, by making Small-Beer pay the Duties of Strong; were all of them acted and done by particular Directions from the Treasury, or by the private Abuse of the Farmers of the Excise, without any Opinion of the Judges: and of these Orders his Majesty could not chuse but be the Author, or Approver at least, since 'tis very well known he constantly sat there when any great Business was to be transacted; and the Lord Treasurer, or Commissioners of the Treasury, would certainly never have presumed to have issued out their Orders in a Case of so great moment, if they had not been very well satisfied that it was his Majesty's express Will and Pleasure to have it so.

And I my self have now by me a Copy of the Earl of *R.* then Lord Treasurer, his Directions to the Officers appointed for the levying of Chimney-Money, commanding them to levy it upon all Cottages and Ovens whatsoever, which was done accordingly with the utmost Rigour: which though it was a very great Oppression, yet it chiefly concerned the poor and ordinary sort of People, who had not Purse to go to law with the King; or else such Gentlemen and others, who though they were forced to pay for their poor Tenants, yet did they not think it worth their while to bring it before the Barons of the Exchequer, where, as things then went, they could not expect to find any redress.

I shall not insist upon the King's taking the additional Customs contrary to the Act of Parliament, by which they were granted to the late King *Charles* only for Life: and though in his last Sickness there was a Contract for the new farming of them, by virtue of which, I grant the King might have justified the taking of them till the end of the Farm; yet since that Contract never passed the Seals during the King's life-time, it was certainly against Law for the King to take them before they were re-granted by Act of Parliament: I say, I shall not insist upon this, since the Parliament were so easy as to pass it by without declaring it to have been illegal; only it sufficiently shows, that from the very beginning of the King's Reign, he was resolv'd to govern arbitrarily, and to levy Money upon the Subject, whether the Law gave him any Authority to do it or not.

But as to what you say concerning the Judges being wholly in fault, for all the unjust and illegal Proceedings exercised in their Courts, and that the King was wholly faultless; I should be of your mind, had I not seen that all those Judges who would not agree to the dispensing Power (and other illegal Judgments I could name) were turned out, and others, either Papists, or of less Consciences than Papists, were put in their places, which were not confer'd for any longer time, than *durante beneplacito*: and therefore no wonder if such Men were absolute Slaves to the King's Will and Pleasure.

M. I had much more to say in defence of the King's raising and keeping up a standing Army, and his disarming Protestants in, and after the Duke of *Monmouth's* Rebellion, which are laid to his charge, as Endeavours to destroy the Rights and Liberties of the Kingdom.

But since it grows late, I shall only now take notice of something which I forgot to insist upon, concerning your Notion of the King's abdicating the Crown by a wilful Breach of the Laws, which is quite different from the Sense in which this Word is taken in *Roman* Authors, as also in our Civil Laws; for when *Cicero* uses the Expression, *Itaque tutela me abdicare cogito*, *Brisson* tells us his meaning was, *se nolle esse tutorem*. But *Pomponius*, in his Book *de Orig. Juris*, L. 5. 13. gives us the true sense of this Phrase; *Abdicare se Magistratu, est ante tempus Magistratum deponere*: which plainly shows the *Romans* had no notion of a tacit or imply'd Abdication of a Charge or Magistracy without a Man's express Consent. And therefore if the King's bare Desertion of the Kingdom was not an Abdication of the Throne (as you your self are forced to grant) I cannot imagine how the King's Violation of the Laws, or endeavouring to subvert the Government (both which you lay to his charge) can properly be call'd an Abdication of it. So that indeed the King hath not abdicated the Government, but your Convention hath abdicated him: and tho we often read in our Civil Law, That a Father may *abdicare filium*; yet I never read, or can you show me any Example, that a Son might abdicate a Father, or Subjects their Prince.

F. You discourse upon a wrong ground; for I never affirm'd, That Subjects had any Authority to abdicate or depose their Prince; nor hath the Convention assum'd any such Power to themselves: what they have done in this Affair hath not been authoritative, or as taking upon them to call the King to an account for his Actions, or to depose him for his Misgovernment; but only declarative, to pronounce and declare as the Representatives of the whole Nation, that by his endeavouring to extirpate the Protestant Religion, and to subvert the Fundamental Laws and Liberties of the Kingdom, he had wilfully (I do not say willingly) abdicated the Government, that is, renounced to govern this Kingdom any longer as a lawful King; which I take to be a tacit or imply'd Abdication of it, as I have already proved. And I can shew you farther, that even *Tully* himself allows our sense of an imply'd Abdication, in his third *Philippick*, when he says thus concerning *Mark Antony*, that by his offering a Crown to *Cesar*, *Eo die non modo consulatu, sed etiam libertate se abdicavit*, &c. where you see *Mark Antony* is said to have abdicated the Consulship without any express Renunciation of it; for *Cesar* might have continued him in it after he had been declar'd Dictator.

M. I grant your Authority to be good, yet even in this sense this Abdication of the Consulship could only take its effect from *Anthony's* own Will; for offering a Crown to *Cesar*, if he did not expressly, yet he effectually renounced his Consulship: for had *Cesar* accepted it, he could no longer have been the Consul

of a Popular State, but must thenceforth have acted by Authority from *Cesar*, or not at all: But then this would not have agreed with your Notion of a Forfeiture, which always supposes a Crime, and a depriving the Party offending from his Office or Dignity, whether he will or not. So that if the Convention have adjudged the King to have abdicated, they must suppose it to have been by his own Consent, or not at all; but if they supposed him to have forfeited, why did they not downright declare so, as well as the *Scotch* Convention had done? and then I could have told the better what to have said to them, and have proved that only Subjects, and not Kings, are liable to Forfeiture.

F. I will not deny, but that the word *forfeited* had been more proper than *abdicated* in this Vote of the Convention; but yet I think I have sufficiently proved, that there is no great difference between a Man's abdicating an Estate by a wilful disposing of it otherwise than the Law requires, and a Forfeiture of it: for as I shew'd you, a Tenant for Life aliening in fee, doth not only forfeit his Estate to him in reversion, but is also an Abdication of it, though perhaps he had reserved to himself a Lease of the Estate for Years: and this is called a Forfeiture of the Estate, though he committed no other Crime, than the wrong done to him in reversion; and therefore (as I said before) this Forfeiture doth not always suppose any Crime for which the Party may be punish'd, otherwise than by the loss of the Estate; nor yet doth it suppose any superiour Power in the Party that takes it.

But your Exception against my Authority from *Tully*, of *Mark Anthony's* imply'd Abdication of the Consulship without any express Renunciation of it, is very frivolous; for you your self own, that *Anthony* did not expressly, but only in effect renounce the Consulship, when he offered *Cesar* the Crown: and if he did not do it expressly, then it seems *Anthony* could renounce the Consulship without ever intending it, by doing an Act that in effect abrogated his own Power; and why King *James* might not do so too with his Crown, I desire you would shew me any sufficient reason. But that the Convention did also look upon this Abdication of King *James* as a Forfeiture, appears plainly by their declaring the Throne vacant, without troubling themselves to find out who was the next Heir to be placed therein.

But to conclude: There might be a very good reason why the Convention did not think fit to make use of the word *Forfeiture*, as the Parliament of *Scotland* have done in the like case; for some of the most wary and prudent Members of the House of Commons, considering that this word *Forfeiture* might prove of very hard digestion to a great part of the House, and also might give great offence to divers of the Bishops and Lords in the House of Peers, they found out this new word *abdicated*, as an Expedient to solve that Difficulty, and which might not only express the King's wilful Desertion of the Government by his first Departure, but also his Renunciation of it, upon those legal Conditions he was to hold it; since, as I have already observ'd, the word *abdicated* in their Vote refers not only to his having withdrawn himself out of the Kingdom, but to all the rest of the Clauses foregoing, or else they would signify nothing in that place, both the Abdication and the Vacancy of the Throne being grounded upon all of them alike. I should now proceed to your last Exception against this Vote of the Convention, *viz. That the Throne is thereby vacant*; but I see it is now very late, and therefore it is best to defer the farther discussing of that matter till another opportunity, which I desire I may have as soon as you please.

M. Yea, and then we will also consider that part of the Convention's Declaration, whereby they resolve that the Prince and Princess of *Orange* be declar'd King and Queen of *England*, &c. which if you can prove to me to be according to the Laws of *England*, I will then acknowledge them to be lawful King and Queen of *England*; but till I am convinced of it, I must beg their pardons.

F. Well, I will wait on you again two or three days hence, and then I hope I shall make out those Points as well or better than any I have done hitherto; and in the mean time I am your humble Servant.

M. I pray do it better if you can, or else you will not very much edify me; but however I wish you good-night.



Bibliotheca Politica.

D I A L O G U E XII.

- I. Whether the Vote of the late Convention, wherein they declared the Throne to be vacant, can be justified from the antient Constitution, and Customs of this Kingdom.
- II. Whether the said Convention, declaring King *William* and Queen *Mary* to be lawful and rightful King and Queen of *England*, may be justified by the said Constitution.
- III. Whether the Act passed in the said Convention, after it became a Parliament, whereby Roman Catholick Princes are debarred from succeeding to the Crown, was according to Law.

M.  Am glad, Sir, you are come, for I was wishing for you ; pray sit down, and let us begin where we left off. You may remember you promised me, when we last parted, that the next time I saw you, you would make out to me from undeniable Proofs and Precedents from our antient Histories and Laws, that the present Convention had done nothing in voting the Throne vacant, and then placing the Prince and Princess of *Orange* therein, but what may be justified by the fundamental Laws and Constitutions of the Kingdom ; for I must still believe (till I am better instructed) that there can be no *Interregnum* in *England*, but that it hath been from the first Institution of the Government an Hereditary Monarchy, where the next Heir by Right of Blood (unless in some manifest Usurpations) has always succeeded to the last Predecessor : As also our best Lawyers with one Consent maintain in their Books of Reports, and the learned *Finch*, in his Description of the Common Law, lays it down as an undoubted Maxim, *That the King never dies* ; and therefore it seems altogether new and unheard of before, for the Convention thus to declare the Throne vacant : for admitting that King *James* had never so justly forfeited or abdicated the Kingdom (term it which you please) yet certainly there could be no Vacancy of the Throne, since the next Heir by Blood ought immediately to have been declared King, or Queen, and so placed therein : whereas we heard in the Country, that there was almost ten days time before the Lords and Commons could agree whether the Crown should be declared vacant, or not ; and when it was so declared, it took up almost a Week's time more before they could agree who should be placed therein. Whereas it was a difficulty only of their own making : for sure the Prince of *Wales* (tho it is

true he is carried out of *England*) ought to have been immediately declared King, as was done in the Case of *Edward III.* who was so declared upon the Deposition or Resignation of King *Edward II.*

F. Tho I grant, ever since the Crown has been claimed by Descent, the Law has gone as you have cited it, and that *Finch's Law* lays it down for a Maxim, I shall not deny; but from the Beginning or Original of Kingly Government, (whether we look before or after your Conquest) it will appear, that the Throne was often vacant, till such time as the Great Council of the Kingdom had agreed who should fill it. And to shew you I do not speak without good Authority, pray tell me (if this Maxim had then obtained) why after the Death of *William I.* his eldest Son *Robert Duke of Normandy* did not immediately take upon him the Title of King of *England*, or at least have done it after the Death of *William Rufus*? who, you know, was placed on the Throne, not by Right of Inheritance, but by his Father's Testament confirmed and approved of (according to the antient *English-Saxon* Custom of Succession) by the common Consent of the great Council of the whole Kingdom; and yet notwithstanding, after the Death of this *William*, *Henry* his younger Brother succeeded him by the free Election and Consent of the same Council, and yet that Duke *Robert* should never in all his Life-time take upon him the Title of King. Pray tell me likewise (if this Maxim had been then known) why *Maud* the Empress, immediately upon the Death of her Father King *Henry I.* did not take (nor yet her Husband the Duke of *Anjou* in her Right) the Title of King and Queen of *England*, tho she had had Homage paid her, and Fealty sworn to her in the Life-time of her Father, as the immediate Successor to the Crown; and yet notwithstanding, the utmost Title she could assume was that of *Domina Anglorum*, Lady or Mistress (not Queen) of the *English*; whilst *Stephen*, who had no other Title but the Election of the great Council of the Nation, held both the Crown and Title of King as long as he lived? As also why *Arthur Duke of Britain*, who, according to the now received Rules of Succession, was the next Heir to the Crown upon the Death of King *Richard I.* never took upon him the Title of King, unless it were that he very well knew that his Uncle King *John* had been placed in the Throne by the common Consent and Election of the great Council of the Kingdom? So likewise after the Death of King *John*, why *Henry* his Son was not immediately proclaimed King, till such time as the great Council of the Clergy, Nobility, and People, had met and agreed to send back Prince *Lewis*, whom they had chosen for their King (tho not being crowned, he never took upon himself that Title) and so chose *Henry III.* (then an Infant) for their King? Lastly, Why all these Princes, viz. *Henry II.* *Richard I.* and *Henry III.* who according to your Notions were undoubted Heirs of the Crown, never took upon them the Title of Kings of *England*, nor are so stiled by any of our Historians, till after their Elections and Coronations, if it had not then been received for Law, that it was the Election of the People, and Coronation subsequent thereunto, that made them Kings; and till this was performed (tho they might look upon themselves as ever so lawful Successors) the Throne was notwithstanding esteemed in Law vacant?

Therefore as for your Instance of King *Edward III.*'s immediately succeeding upon the Resignation of his Father (if you please better to consider of it) that makes against you; for it is plain from *Th. Walsingham*, and *H. de Knyghton*, that Prince *Edward* succeeded not to the Crown by Succession, but the Election of the great Council or Parliament: the words are express, *Huic Electioni universus Populus consensit*. And this was also owned by *Edward II.* himself, who when the Commissioners of all the Estates of Parliament came in all their Names to renounce their Homage to him, yet in the midst of all his Sorrow he gave them Thanks, *Quod Filium suum Edwardum post se regnaturum eligissent*; which plainly shews, that the Parliament had then such a Notion of a Forfeiture proceeding from his Deposition, for violating the fundamental Laws of the Kingdom, that the eldest Son and Successor could pretend no other Right to it (even in the Judgment of the late King himself) but what proceeded from their Election.

M. I cannot deny but what you have now urged from matter of fact, may appear very plausible to your self, and those of your Notions; yet if it be
looked

looked cloſer into, I doubt not but the known Laws then received, and the Notions the People had then of a lineal Succeſſion by Right of Inheritance, will prove directly contrary to the matter of Fact: For you know very well, *à facto ad Jus non valet conſequentia*; but that all the Princes you mentioned, except the three laſt, were really Uſurpers, and not lawful Kings, I ſhall let you ſee by evident Authorities from the Hiſtorians of thoſe times. For, in the firſt place, tho I grant *William Rufus* ſucceeded to the Crown by his Father's laſt Will, which was certainly unlawful (as being contrary to the received Laws of Succeſſion in *Normandy* as well as *England*) yet it was not by Election of the People, as you ſuppoſe, but by the Kindneſs of Archbiſhop *Lanfranc* his Godfather, and the Favour of the greater part of the *Norman* Barons, who came over with his Father, as well as out of Hatred to Duke *Robert* his elder Brother, that he was thus made King. So that *William Rufus* claimed as a teſta-
mentary Heir, and by reaſon of that Claim was advanced to the Throne by
the Aſſiſtance of *Lanfranc*'s and the Biſhop's Faction, who then ſwayed the No-
bility and People, but yet never owned any Election from them; ſo that if
you rightly conſider this Story, you cannot call it an Election, but a Deſigna-
tion or Nomination by his Father *William* the Conqueror, and conſented to
by the major part of the Biſhops and Lords of the Kingdom, but not by their
Election or Decree as a Common Council, as you ſuppoſe.

B. H. S. pag.
368.

But that for all this, Duke *Robert* his Brother, being aſſiſted by *Odo* Biſhop of *Bayeux*, and the Earl of *Kent* his Uncle, as alſo divers other *Norman* Lords, who, being ſatiſfied of his Right, raiſed a War in *England* againſt *William*, and great miſchief was done on both ſides, till at laſt a Peace was made between them upon theſe Conditions, among others (as *Matthew Weſtmiſter* re-
lates it) That becauſe of the manifeſt Right Duke *Robert* had to the Crown,
he ſhould have a yearly Penſion of three thouſand Marks out of the Revenue
of *England*; and he, of the two Brothers, that ſurvived the other, if he died
without Children, ſhould be Heir to the Deceſſed. And ſo far were they from
thinking this Agreement ſtood in need of the Ratification of a great Council,
that there were but twelve of the principal Men on each ſide ſworn to ſee it
duly obſerved.

S. D. pag. 7.
F. 276.

But if we come to conſider the next putting by of Duke *Robert* from his Right to the Crown, you will find it to have been done with a far leſs colour of Right than the former; for he being then abſent in the *Holy Land*, at the time of *Rufus*'s Death, *Henry* his younger Brother laid hold of the Opportunity, and aſſembling divers of the great Men of the Kingdom, he promiſed
them to make a full Reſtitution of all their antient Laws and Liberties, and
confirm them by his Charter, and abrogate ſuch ſevere ones as his Father had
made; thereupon they did unanimouſly conſent to crown him King. Now I
cannot ſee how this (managed with ſo much Artifice) Corruption can properly
be called an Election, ſince that ought to be a deliberate ſedate Action, and
at which all the Perſons concerned ought to be preſent. But this could not
poſſibly be; for King *William* was killed on the 2d of *Auguſt*, and buried the
next day; and the day after, being Sunday, this pretended Election was
made: And the *Saxon Chronicle* tells us, "That thoſe great Men, who
" were near at hand, choſe his Brother *Henry* King." So that this looks more
like the Combination of a Faction of ſome Biſhops, Lords, and great Men,
than the free Election of a King; ſince it was impoſſible for all that were, or
ought to be preſent from all Parts of the Kingdom, to have notice to aſſemble
and diſpatch that great Buſineſs in two days time.

S. D. pag. 7.

Anno 1100.

But to let you ſee that Duke *Robert* did not ſit down contented with this Uſurpation upon his Right; as ſoon as ever he came from the *Holy Land*, he ſtrait made war upon his Brother, and many great Men of the *Normans* took his part. And this War was eagerly carried on for ſome time, and Duke *Robert* landing in *England* with an Army, King *Henry* marched againſt him with all his Forces; but (as the *Saxon Chronicle* alſo tells us) ſome principal
Men going between them, brought them to an Agreement, upon condition
that King *Henry* ſhould pay Duke *Robert* three thouſand Marks Penſion yearly,
and that he of the Brothers who ſurvived the other, ſhould be Heir of all
England and *Normandy*, unleſs the Party deceaſed ſhould have Children of his
own. So that tho I grant King *Henry* recites in his Charter in *Matthew Paris*,
that 369.

Ibid.

B. H. S. pag.
that 369.

that he was crowned King by the Common Council of the Barons of *England*; yet his saying so could give him no Right, and he must say this or nothing, for no other Pretence or Title he could have. And there never was any other Usurper in his Circumstances, but must say that, or some such thing, to make out a Title: and therefore to answer your Question, why Duke *Robert* took not upon himself the Title of King, neither upon the Death of his Father, nor after that of his elder Brother; I think this may serve for an Answer, that he parting with his Right to both his Brothers successively, he then looked upon it as needless to take the Title of King upon him, as not looking upon himself then to be so.

F. I confess you have from your Doctor, together with some Assistance of your own, made a very cunning Gloss upon these two great Instances of Vacancy and Election, to evade, if it were possible, that Right which the great Council of the Kingdom then challenged to themselves; and therefore I shall make bold strictly to examine what you have now said. In the first place, as to the Title of King *William Rufus*, tho I grant it was founded upon his Father's Testament, yet you see that this was not good alone, without the Consent and Approbation of the Common Council of the Kingdom. I think I have sufficiently proved at our last Meeting but one, when we discoursed of the force of the like Testament made by King *Edward* the Confessor to King *William* I. which according to the *English-Saxon* Law (that was still observed) was never valid, until confirmed by the Consent of the *Wittena Gemot*, or Council of the Wisemen; that he that had both these, whether next Heir by Blood or not, was always esteemed as lawful King, as I have also proved from the Testament of King *Alfred*. And tho you will take no notice of it, yet was this Testament of King *William* I. then produced and read in the Common Council of the Bishops, Earls, and Barons of the Kingdom, as appears by all the antient Historians who treat of this matter. I shall only give you a taste of them: *Matthew Paris* expressly relates the Circumstances of it, in these words; *Optimates frequentes ad Westmonasterium in Concilium convenere, ubi loci post longam consultationem Gulielmum Rufum Regem fecere*. And Abbot *Brampton* tells us, that it was done in a full Council, *convocatis Terra Magnatibus*; so that here was nothing wanting to a full Election or Confirmation at least of King *William's* Title, and till this was done, it is plain the Throne was vacant.

But as for the Claim that Duke *Robert* made to the Crown, tho I do not deny but he might think himself to have a just Title to it, by a received Custom among divers Nations, by which the eldest Son is looked upon to have a Right before the younger; yet that this is no Law of Nature, and consequently not Divine, I think I have sufficiently proved at our second Meeting. But that this Right of Succession of the eldest Son was no fundamental Law of this Kingdom, I think I can sufficiently prove from our *English-Saxon* Histories, as well as Laws. And as for what you say concerning those *Norman* Lords and Bishops who joined with Duke *Robert*, after his Brother was crown'd King, it is called no better than Treason by all the Writers of those times; for *Florence of Worcester*, and *Sim. of Durham*, both tell us, that the King thereupon called together the *English*, and opened unto them the Treason of the *Normans*; and the *Saxon* Chronicler, who seemed to have lived about that time, compares the Treason of Bishop *Odo* to that of *Judas Iscariot* against our Lord. And tho I grant King *William* might make such an Agreement with his Brother Duke *Robert*, as you mention; yet as for the three thousand Marks Pension, which you say he was to pay him, I very much doubt it; since no Historian but *Matthew of Westminster*, who lived between two and three hundred years after, makes mention of it: and therefore I think it is to be referred to the following Agreement betwixt this Duke and his Brother King *Henry*, which the *Saxon* Chronicle expressly mentions.

Having now examined and cleared the Title of King *William Rufus*, I come next to justify that of King *Henry* I. to the Crown, notwithstanding all you have alledged against it, which yet is no more than what you said before, that Duke *Robert* had an Hereditary Right, and therefore he could not be put by, which is to beg the Question: for you cannot prove to me that he had this Right either by the Law of Nature, the Law of *England*, or the Law of *Normandy*; not by the two former, as I have already proved: for your Conqueror himself

Pag. 231.

Col. 983.

An. D. 1087.

himself being a Bastard, had no better Title to the Dutchy of *Normandy* than his Father's last Will, before he went to the *Holy Land*; which was not good without the Consent of the Nobility of that Dutchy, as appears by the Historians of that time. So that the greatest Objection you have to make against King *Henry's* being elected in a true Common Council of all *England*, is this, that the time was so short between the Death of *William Rufus* and his Election, that it was impossible for all the Parties that had Votes to be there present, which is a very bold Assertion; for how can you or your Doctor tell, that at the time when King *William* was kill'd, he might not then have held a great Council at *Winchester* (where he then lay) who might immediately upon his Death chuse his Brother *Henry* for their King? for it is certain the Election was there the Day before his Coronation at *London*; and therefore it was very rashly done to affirm, that this Election was not in a Common Council of the Kingdom, when all the Historians, and particularly *W. Malmesbury* tells us the manner of it, and the Disputes there were about it, viz. that *Henry* was elected King as soon as King *William's* Funerals were over, *Aliquantis tamen ante Controversiis inter proceres agitis, &c.* And *H. de Knyghton* reciting the Cause why Duke *Robert* was set aside, viz. because he had been always contrary and unnatural to the Barons of *England*; therefore *quod plenario consensu & consilio totius Communitatis Regni, ipsum refutaverunt, & pro Rege omnino recusaverunt, & Henricum fratrem in Regem erexerunt*: which plainly shews, that it was the Opinion of all the antient Writers, out of whom *Knyghton* took this Passage, that this Election was made by the free Consent, and in a full Council of all the whole Community of the Kingdom. Nor does the After-claim of Duke *Robert* to the Crown at all alter the Case, for the Reasons already given, as also because the Agreement that was made between them, that he that survived should succeed the other, was never confirmed or agreed to by the great Council of the Kingdom; and therefore those *Norman* Lords that joined with Duke *Robert* here in *England*, are justly taxed by *William of Malmesbury*, and the *Saxon* Chronicle, with Infidelity and Rebellion. And tho' I grant that *Matthew Paris* (or rather *Roger of Wendover*, whom he transcribes) seems to condemn King *Henry's* taking the Crown as unjust, and contrary to Right, and that he therefore feared the Justice of God, *eo quod fratri suo primogenito, cui jus Regni manifestè competeat, temere usurpando injustè nimis abstulerat*: yet this Author writing about the middle of the Reign of King *Henry III.* who had succeeded his Father by a pretended Right of Inheritance as well as Election, it is no wonder if he, who writ near a hundred years after this Transaction, should give his Judgment in this matter according to the common Opinion and Prejudice of that Age, and must certainly speak by guess; for how could he otherwise affirm (unless he had been acquainted with that King's Thoughts) as he doth in the same place, that he felt *Conscientiam suam in obtentu Regni cauteriatam*? since no other Writer, either at that time, or after it, does thus blame King *Henry* for taking the Crown.

But as for the account you give why Duke *Robert* never took upon him the Title of King, if the Throne had not then been looked upon as vacant, because of the Agreement which he made with his Brothers, by which he parted with his Right for a Pension during his Life, it is not at all satisfactory: for, in the first place, neither of these Agreements were made till above a year after his pretended Title did accrue to him by the Death of his Father and Brother; and therefore he ought, if he had looked upon himself as true King, to have immediately taken the Title upon him, which he never did. So likewise the Agreement it self makes wholly against your Notion of any Hereditary Succession to the Crown to be then settled, since the main Clause in both these Agreements is, that the Survivor should be Heir to him that died first, unless he left Children of his own to succeed him: which plainly shews, that in the Opinion of both those Princes, and of the great Men that swore on either side to see it observed, they knew of no such settled Right of Succession in their Heirs, which they themselves could not part with, or else this Clause had been wholly in vain; since both King *William* and King *Henry's* Children were to have succeeded to the Crown of *England*, by virtue of both these Agreements, before the Sons of Duke *Robert*, had his Son *William* (who was only Earl of *Flanders*) survived him.

But

But now, if you please, you may proceed with your other Exceptions against the rest of the Instances I have here given you of the Vacancy of the Throne, till such time as the Common Council of the Kingdom had agreed whom to place therein.

M. As to what you have said in defence of the Vacancy of the Throne, after the Death of King *Henry I.* it carries less shew of Reason than what you urged in the former Cases; since all Writers agree that this was a manifest Usurpation in *Stephen*, who could pretend no sort of Title to the Crown himself, as well as Perjury in the Bishops, Lords, and great Men of *England*, who having sworn Fealty to King *Henry's* Daughter *Maud* in his Life-time, made *Stephen* Earl of *Blois* their King: therefore *William* of *Malmesbury*, and all the Writers of those times, accuse *Stephen* of downright Perjury and Usurpation; and likewise relate, that he was advanced to the Crown thro the power of the *Londoners* and Citizens of *Winchester*. But yet all these Endeavours had been in vain, unless he had been assisted by his Brother *Henry* Bishop of that City, and then the Pope's Legate in *England*, and favoured by the Archbishop of *Canterbury*, who crowned him: And yet for all this there was but a very small Faction of the Bishops and Lords who were for his Coronation; for *W. Malmesbury* tells us, *Coronatus est ergo in Regem Anglia Stephanus, tribus Episcopis presentibus, nullis Abbatibus, paucissimis Optimatibus.*

L. 1. p. 178.

And many of the Nobility and great Men of *England* were so sensible of this, that being headed by *Robert* Earl of *Gloucester* (the Empress's base Brother) they raised a War against *Stephen*, which after her coming over hither was carried on with great Vigour. And tho I grant, that after divers Changes of Fortune the Empress was at last forced to quit the Kingdom, yet her Son Duke *Henry* did not fail to continue his Claim to the Crown in right of his Mother; and coming over into *England*, renewed the War against King *Stephen*, which was at last composed by an Agreement between them, which, as

M. Par. f. 86.

M. West. 246.

Matthew Paris and *Matthew Westminster* relate it, was thus: "That King *Stephen* acknowledged, in an Assembly of Bishops and other great Men of the Kingdom, that Duke *Henry* had an Hereditary Right to the Crown; and the Duke thereupon as kindly granted, that King *Stephen* should peaceably possess it during his Life." So that it is certain, till this Agreement (even by his own Acknowledgment) he had no Right to it: and tho I grant that the Empress *Maud*, for some Reasons we are not able to give a true account of, never took upon her the Title of Queen; yet it is very certain that she acted as such during all the time she was in *England*, receiving Homage and Fealty from those Lords and others who came over to her side, and also granting Charters and conferring Honours by the Title of *Anglorum Domina*; which shews, she looked upon her self to be the supreme Governess of the Kingdom, tho not under the Title of Queen. So that I think you can find nothing in this Transaction that can support your Notion of Vacancy.

F. Pray give me leave to answer what you have now said before you proceed farther: First, I cannot excuse either King *Stephen* for taking the Crown, or the Bishops and great Men that set it on his Head, from Perjury and Injustice; since the Empress *Maud* had been before, in a Common Council of the whole Kingdom, declared the lawful Successor, and that Fealty had been sworn to her as such. All that I insist upon in this Affair, is this, that *Quod fieri non debet, factum valet*: And tho this ought not to have been done, yet when once done it did stand good; and if whilst the Throne was vacant, King *Stephen*, by the Election and Consent of the Bishops and great Men of *England*, was placed therein, he was therefore looked upon as true and lawful King as long as he lived. And this was indeed the Reason why the Empress never took upon her the Title of Queen of *England*, no not when she had taken King *Stephen* Prisoner, and one would have thought might have justly done it as a Conqueress: But yet she forbore it, because that Title was not then to be taken without the Consent of the great Council of the Kingdom, which I cannot find she ever held, her Party being not great enough to make one. And tho I cannot deny but that she might in some Particulars exercise some Privileges of Royal Power, yet this was only upon a pretence of her being elected and stiled by this Title of Lady of the *English*, in a Synod of the Clergy at *Winchester*, by the Procurement of *Henry* the then Bishop of that See, and the

the Pope's Legate, who was now turned against his Brother King Stephen: For she was never generally received nor owned as Queen, nor did she ever exercise those great Prerogatives of Sovereign Power, viz. calling of great Councils, making of Laws, raising of Taxes, or coining Money.

But whereas you represent King Stephen to have been elected but by a very small Party of the Bishops and Noblemen of England, yet it is very much to be doubted whether William of Malmesbury (who dedicated his History to Robert Earl of Gloucester, King Stephen's greatest Enemy) being no Friend to his Title, is to be altogether credited in this matter. For Henry of Huntington Pag. 386 (who lived not long after) tells us expressly, that *Omnes qui Sacramentum juraverant, tam Praefules quam Consules & Principes, assensum Stephano praeberunt & hominum fecerunt.* And it is also as certain that the Earls of Gloucester and Chester (the two greatest Men of England) did then likewise swear Allegiance to him, and own his Title, tho they afterwards revolted from him again; yet could they do nothing considerable against him, till his own Brother the Bishop of Winchester revolted also from him, upon pretence that the King had violated the Rights of the Church. And tho it is true that after the Empress's Departure out of England, Duke Henry her Son came over and prosecuted the War against King Stephen, yet could it not be in his own, but his Mother's Right, who was then alive. Nor could the Agreement you mention be made between the King and the Duke, as having then a Right to the Crown in his own Person, since we read of no Concession the Empress his Mother had made to him of it; and therefore whatever Title Henry could claim thereunto upon the Death of King Stephen, it was wholly due to this King's adopting him for his Son, and declaring him his Successor, upon condition that he himself should enjoy the Crown during his Life: which Agreement was solemnly confirmed and ratified, and that by Oath, in a full Assembly of all the Bishops, Lords, and great Men of the Kingdom. For Ordericus Vitalis, in his *Annals*, pag. 989. is very express in the manner of this great Transaction, in these words: *Sic tamen in praesentiarum ipse Rex & ceteri potentes Sacramento firmarent quod Dux post mortem Regis, si tempore eum superviveret, pacifice & absque contradictione Regnum haberet*: therefore as long as the Empress Maud lived (who died after her Son King Henry's coming to the Crown) 'tis plain he could have no Hereditary Right to it, notwithstanding what Matthew Paris and Matthew Westminster (who lived long after these Transactions) have said to the contrary, who therein are to be looked upon as Authors that speak their own sense, rather than that of the Writers of those times.

Vid. Hen.
i Hist. p. 397.
Richard. de
Hagulstad. col.
314. Joh. de
Hag. p. 232.

M. I confess what you have urged in this matter, concerning Duke Henry's being admitted as Heir of the Kingdom during the Life of his Mother the Empress Maud, seems to the purpose: and there could be nothing said against it, but that this was done by the Concession of the Empress her self, who surrendered all her Pretensions to her Son, tho we have no particular account of it; or else (which is more likely in my Opinion) that the Government of Women being then unknown in England and Normandy, and consequently odious to the English and Norman Nobility, and for which reason chiefly they had before set this Empress aside, they thought they did in effect perform their Oath to her, when they acknowledged her Title in her Son Duke Henry, who is said, by the Historians of those times, to have succeeded Stephen *Jure Hereditario*; which could not at all agree with your Notion of his receiving his Title from the Consent or Election of the great Council.

But I shall pass over this, and come to your next Instance of the Vacancy of the Throne, which you pretend to have been upon the Death of King Henry the Second. Now your only Argument to prove this, is, that King Richard, tho his eldest Son alive, was only called Duke of Normandy, and never King of England, till after his Coronation; whoever will but consider the Circumstances of this matter, will find that he was indeed owned for King of England before his pretended Election or Coronation. For before his coming into England to be crowned, Roger Hoveden tells us, "That every Freeman Pag. 373 of the whole Kingdom, by the Command of his Mother Queen Eleanor, swore, *Quod fidem portabit Regi Angliae Richardo Regis Hen. filio*:" which plainly shews, that he was then by common Intendment looked upon as King before his Coronation: Tho I confess that this very Author also relates, that

Col. 617.

all the Estates of the Kingdom were assembled at *London*, by whose Counsel and Assent the said Duke was consecrated and crowned King of *England*; and tho *Ralph de Diceto*, then Dean of *St. Paul's* (who in the Vacancy of that Church then supplied the Office of the Bishop at King *Richard's* Coronation) hath this Passage; *Comes itaque Pictavorum Richardus Hereditario Jure promovendus in Regem, post tam cleri quam populi solemnem & debitam electionem involutus est triplici Sacramento, &c.* Now what can this solemn and due Election here signify? Or what can it mean farther, than that *Richard*, being King by Hereditary Right, was so owned and recognized by the Clergy and Laity?

Hov. p. 105.

F. I desire I may reply to this before you proceed farther. I confess what you say about the Empress *Maud's* Surrender of her Right to her Son Duke *Henry* would be considerable, if you had any Authorities from our ancient Historians to support it; but since you have not, I look upon it as no better than a mere Surmise of those of your opinion, that the Crown was then enjoyed by an Hereditary Right, without any Consent or Election of the People. And so likewise is your other fancy, that because Women were then looked upon as incapable to govern, therefore the Bishops and great Men of the Kingdom supposed they had sufficiently performed their Oath of Allegiance to her, by acknowledging her Son Duke *Henry* for the right Heir of the Crown. Now if this had been so, pray tell me to what purpose King *Henry* I. (Father to the Empress) should have made all the Estates of *England* swear Fealty to his Daughter, if a Woman had been then looked upon as incapable to govern? Or to what purpose should the Clergy, in the Council at *Winchester*, chuse this Empress, as the King's Daughter, Lady both of *England* and *Normandy*, as *William of Malmesbury* tells us expressly that they did, and that he was present at it? Or how could the great Council of the Kingdom believe that they had sufficiently satisfied their Oath to the Daughter, in conferring the Allegiance that was due to her upon her Son? I am sure no Heiress of the Crown would look upon that as a good Performance of their Oath at this day. When you can answer me these Queries, I shall be of your Opinion in this Point, but till then I beg your pardon.

But as to what you say against the Vacancy of the Throne upon the Death of King *Henry* II. till King *Richard* was elected and crowned, I desire no better Authority to the contrary than those very Authors you have now cited for your Opinion: For first *Hoveden*, in the very place you have quoted him, says, "That the Duke was to be [in *Latin*, *in Regem*] crowned King by the Counsel and Assent of all the Parties there present." Now if I understand any thing of Grammar or Sense, he was not King before, and therefore needed their Assent to make him so. Likewise in the next Quotation from *Ralph de Diceto*, the Duke is said, *Hereditario Jure promovendus in Regem*; which words being in the Future Tense, shew he was not then, but was to be promoted to that Dignity. Now if his Hereditary Right alone could have done it, then to what purpose are all these words foregoing? So that tho this Right gave him a fair Pretence to succeed to the Crown, yet it is plain from both the Authors you have quoted, that he did not till after the due Consent and Election of the Clergy and People: So that after all, your Questions (what can this solemn and due Election signify? or what can it mean farther, than that *Richard* being King by an Hereditary Right, was so owned and recognized by the Clergy and Laity?) will receive a very easy Answer from what has been already said, till you can shew me out of any Dictionary, that *Consilium* and *Assensus* (which are the words of *Hoveden*) and the words *solemnis & debita Electio*, ever signified an Owning or Recognition of an Hereditary Right.

I confess the only colour you have for your Interpretation of those words in *Hoveden*, which you have now cited, is Queen *Eleanor's* making every Freeman of the Kingdom swear Fealty to *Richard* King of *England*, as to their Liege Lord: from whence you would infer, that by common Intendment of Law he was looked upon King of *England* before he was crowned, and consequently there could be no Vacancy of the Throne. Now admit that he was commonly called King before he was crowned, or that the Queen his Mother would make the People swear to him as such; yet that could not make him so, since the same Historians also tell us, that *Hubert* Archbishop of *Canterbury*, and *William* Earl *Marschal*, made the People of *England* take a like Oath to Earl

John

John as their Lord (not King) immediately after the Death of King *Richard* his Brother; and yet I suppose you will not affirm, that their swearing Fealty to him as their superiour Lord, made him King, or gave him a just Title to the Crown. And I desire you, or any indifferent Man, to tell me which was *Hoveden's* Opinion, whether this swearing Fealty was a sufficient Declaration of his being King, or else all those other Expressions which signify the contrary, when immediately before his Coronation he only calls it *Ducem Richardum, qui coronandus erat in Regem*; which I think is as plain a Distinction of his being a Duke before he was crowned, and a King afterwards, as words can make.

M. I see it is in vain to urge this Point any longer, and therefore I shall proceed to your next Instance of the Vacancy of the Throne, after the Death of King *Richard*, until King *John* was placed therein. Now tho it is certain that this Prince was an Usurper upon his Nephew Duke *Arthur*, yet whether he was ever elected in a Common Council of the Bishops, Earls, and Barons of the Kingdom, is very doubtful: But suppose he were, it was done wrongfully, and to the prejudice of *Arthur* Duke of *Britain*, the right Heir to the Crown, who being young and a Stranger, it is no wonder if he were put by, and his Uncle, who was a Man, and better acquainted with *England*, having the Interest of the Archbishop of *Canterbury*, and most of the great Men, got the Crown from him; and yet for all that *Hoveden*, who was alive at this time, speaks not a word of his being elected, but only that upon his coming into *England*, he was received by the Nobility, and crowned by *Hubert* Archbishop of *Canterbury*. So that there is not one word there of any Election by, but only a Submission from, the Lords Spiritual and Temporal to King *John*, and a Recognition that he was their King. Nor indeed could he need it, if it be true what the same Author tells us, "That when King *Richard* despaired of Life, Hov. f. 449. he devised to *John* his Brother the Kingdom of *England*, and all his other Lands, and caused all those that were present to do him Fealty." And this is related by *Hoveden*, in all probability an Eye-witness of these Transactions.

So that the first Author we find to mention any thing of the Particulars of this pretended Election, is *Matthew Paris*, who has given us the Speech which Matt. Paris f. 197. the Archbishop made at this supposed Election, and also recites the Archbishop, Bishops, Earls, and Barons, and all others who ought to be at his Coronation. The Archbishop standing in the middle of them, said thus: "Hear all of you, your Discretion shall know, that no Man hath Right to succeed in this Kingdom, unless, after seeking God, he be unanimously chosen by the University of the Kingdom:" (that is, those that are here said to meet at *London*.) The rest of the Speech needs no repeating, only he lays it down for Law (which I think was never heard of before) "That if any of the Progeny of the dead King did excel others, they ought more readily to consent to the Election of him." And so upon this Speech made in behalf of Earl *John*, and full of a great deal of fulsome Flattery, he was declared King.

But to let you see what a sort of Man this Archbishop *Hubert* was, take what the same Author tells us in the same place; that being asked afterward why he said these things, he answered, "That he guessed, and was ascertained by certain Prophecies, that *John* would bring the Kingdom and Crown into great Ibid. confusion; and therefore lest he might have too much liberty in doing it, he affirmed, he ought to come in by Election, and not by Hereditary Succession." Now tho this learned Doctrine of the Archbishop asserts a Right of Election in the Convention of Bishops, Earls, Barons, &c. yet by his own Answer, when he was asked why he said these things, it clearly discovers it to be only a Design and Artifice in the Archbishop, to cause them to set up and make *John* King, and in which also he denies any such Right of Election. But since *Hoveden*, nor any other of our antient Historians make mention of this Election, but only of his Coronation, and the Bishops, Earls, and Barons assisting at it, not giving their Consents to it, it may very well be, that that Story of an Election, and this Speech of Archbishop *Hubert*, might be only an Invention of *Matthew Paris*, or rather of *Roger of Wendover*, from whom he took most of his History: but that this Doctrine of the Archbishop, concerning the Election of our Kings, if meant according to the modern understanding of it, was then new, *Gervase*, a Monk of *Canterbury* in the year 1122.

Col. 1338.
N. 30.

who also speaks of the Coronation of *Henry I.* says, it was manifest, and known almost to all Men, that the Kings of *England* were only obliged and bound to God for the Possession of the Kingdom, and to the Church of *Canterbury* for their Coronation; *Manifestum est autem & omnibus fere notum, Reges Anglia soli Deo obligari & teneri ex ipsius regni adoptione, & Ecclesie Cantuariensi ex Coronatione.*

But that King *John* was looked upon as an Usurper, is very certain, since besides some of the honest *English* Nobility that took Duke *Arthur's* part, the King of *France* did also make war upon King *John* on his Nephew's account, because he looked upon him as true Heir to the Crown; and therefore when King *John* had privately made away his said Nephew in Prison, the King of *France* summon'd him, as Duke of *Normandy*, and Peer of *France*, to answer for the Murder in an Assembly of the Peers of *France* at *Paris*; where, for his refusing to appear, he was condemn'd to death, and his Dukedom of *Normandy* declared forfeited to the King of *France*.

F. I confess you have said as much as can be, to prove that King *John* had no Hereditary Right to the Crown, nor was so solemnly elected to it (as *Matthew Paris* relates;) but yet for all this, I think I may very justly oppose all that you have now said upon this Head: for in the first place, it was then very much disputed (as it hath been also since that time) if an elder Brother died, and left a Son a Minor, whether his younger Brother or his Son should succeed. For tho the People of *Anjou*, and those of *Guienne*, own'd Duke *Arthur* for their Prince, yet the States of *Normandy* were of another mind, and by virtue of King *Richard's* Testament, he was immediately after his Death invested with that Dukedom; nor was he then at all opposed in it by the King of *France*, tho supreme Lord of the Fee: and as for *England*, besides his Brother's Testament, whereby he left him Heir of all his Territories, it was also then generally held in *England* as most consonant to the antient *English-Saxon* Law of Succession, that the Uncle should succeed to the Crown before the Nephew. Therefore it is no wonder if Duke *Arthur* found so small a Party here, not any Bishop, Earl or Baron (as I read of) owning his Title: and as for the King of *France*, it is also as certain, that he did at first own King *John* for Lawful King of *England*, and Duke of *Normandy*, and entred into a Treaty of Peace, and made a League with him as such; tho it is true that afterwards, when he had a mind to pick a quarrel with that King, he then set up Duke *Arthur's* Title. And tho this Duke was made away in the beginning of King *John's* Reign, yet did not the King or Peers of *France* ever take any notice of it, till about twelve or thirteen Years after, when he had now unjustly conquered all *Normandy*, and almost all that King's other Territories in *France*; and then wanting a Title to keep them, he began this Prosecution you mention against him, and upon his Non-appearance he was condemned unheard. But that the King of *France* himself, and all the great Men of that Kingdom, did look upon him to have been lawful King of *England*, appears by that Speech which *Matthew Paris* relates to have been made after King *John's* Deposition by the Barons of *England*, by a Knight whom Prince *Lewis* of *France* had made his Procurator, to treat with the Pope's Legate about his coming over hither: "where, when he had recited that King *John* had been condemn'd by his Peers for the Death of his Nephew *Arthur*, and that he had been also for his great Cruelties and other Wickedness deposed by the Barons of *England*; and farther reciting that the said King, without the Assent of his Nobility had resign'd his Kingdom to the Pope to hold it of him at an annual Tribute of a thousand Marks:" (the rest I will give you in *Latin*, because you your self may translate it) *Etsi Coronam Anglia sine Baronibus alicui dare non potuit, potuit tamen dimittere eam; quam statim cum resignaverit, Rex esse desiit, & Regnum sine Rege vacavit, vacans itaque Regnum sine Baronibus ordinari non debuit, &c.* So that you may see that by the Order of Prince *Lewis*, and the Allowance of the King of *France* himself, every one of our Opinions are maintain'd for good: First, That King *John* was, before the Resignation of his Crown to the Pope, true and lawful King. Secondly, That by that Resignation to the Pope, he did dismiss or abdicate his Right to it; (for so I suppose the word *dimittere Regnum* is here to be render'd.) Thirdly, That upon this Dismission of the Crown, the Throne became vacant. Fourthly, That upon this Vacancy the Kingdom could not

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not be confer'd without the Consent of the Barons, that is; the great Council of the Kingdom.

But let King *John's* Right to the Crown have been what it would, it is certain, that he could not take it upon him, until such time as this Great Council had both heard and allow'd his Title: and that this was in the nature of an Election, notwithstanding his Brother's Will, appears by that Account which *Roger Wendover* and *Matthew Paris* have given us of it; which tho *Hoveden* and other Writers have omitted, yet doth it not therefore follow, that this was all the pure Invention of *Roger of Wendover*, or *Matthew Paris*, since the former, living near that time, might write from the Relation of some that were then present; and as for the latter, I look upon him, tho a Monk, as a Man of too great Integrity to invent any thing of his own head. And I confess the Account that Archbishop *Hubert* gives, why he put King *John's* Title rather upon Election than Succession, looks very suspicious; since the Archbishop must thereby have made himself a Knave and a Hypocrite, and seems also to contradict what *Matthew Paris* had before said, viz. "That all those that heard his Speech, dared not so much as doubt of these things, knowing that the Archbishop had not thus judged of this matter without cause." And therefore I grant that this part of the Relation, concerning the Archbishop's vindicating of himself for thus giving his Judgment, might be a Story commonly taken up, and being told to this Author, was by him inserted in his History at a time, when I grant the Crown of *England* began to be thought successive, by reason that King *Henry III.* had succeeded as the eldest Son of his Father, tho he was not for all that admitted without Election, as I shall prove by and by. But that King *John* was made King by Election, tho he claim'd it from his Brother by Succession, likewise appears from his own Charter, still to be seen at this day in the Archbishop's Archives at *Lambeth*; wherein he recites, that he came to the Crown, *Jure hereditario, & mediante tam Cleri quam Populi unanimi consensu & favore.* Where you see plainly that he derives his Title from the Consent and Favour of the Clergy and People, as well as his own Hereditary Right.

Vid. Charta moderationis feodi magni sigilli.

M. Notwithstanding what you have now said, I cannot agree with you, that by these Words you have cited from this Charter, is to be understood any formal Election of the Clergy and People; but that this unanimous Consent mention'd in it, was rather their Acknowledgment of his Title, and Submission to him, than any thing else: for according to *Hoveden's* Relation of his coming to the Crown (which I think the most exact extant) the whole Nation submitted, and swore Fealty to him against all Men, before he came over into *England*.

But as for his Son *Henry III.* it is much more plain that he succeeded by Succession, and not by Election, as being the eldest Son of the late King his Father, as appears by the Relation of his Coronation in *Matthew Westminster*, who tells us thus: *Henricus Johannis primogenitus in Regem inunctus & solemniter coronatus est.* And tho from the Speech which was made to the Clergy and Nobility that were then at *Gloucester* by the Earl *Marshall*, 'tis pretended, that *Henry* was elected; yet I dare say, if any one do but impartially consider the Tenour of it, he will find that the Design of it was rather to persuade all those then present to return to their Duty, and acknowledge him for their King, whom God and Nature had design'd for that great Charge: for the Earl begins his Discourse to them thus, (as it is in *Knighton*) *Ecce Rex vester!* (which certainly could not then be true, if an Election was necessary to make him such) but amongst the rest of his Arguments, he urges this; *Hunc igitur libeat Regem dicere, cui ipsum Regnum debetur;* You ought to chuse him, to whom the Kingdom is due: (which surely it can be to none, if it be not Hereditary.) And what puts all out of doubt, that the Kingdom was not then (and if not then, I am sure never since) Elective, is the Answer of *Hubert de Burgh* to *Lewis*, when he summon'd him to deliver up *Dover-Castle* to him, since his Master, for whose use and service he held it, was dead: but see his Answer, "If my old Master," says he, be dead, he has left behind him Sons and Daughters to succeed him." A thing he never would have asserted, had he not thought there had been a Divine Right somewhere else than in the People.

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S. D. p. 13.

Col. 2426.

F. Before I speak any thing to King *Henry* the Third's Election, give me leave to reply to what you have said against the express Words of King *John*'s Charter; for if *Favor* and *Consensus* does not signify somewhat more than a bare Acknowledgment and Submission, I understand neither *English* nor *Latin*. Nor is this any Answer to the express Testimony of *Roger* of *Wendover* and *Mat. Paris* to the contrary. And as for *Roger Hoveden*, he does not say he was not elected, but only omits the manner of it, as divers other Historians do. So that (at the best) this is but a negative Argument; and yet that *Hoveden* himself did not look upon him as King even after the whole Nation had sworn Fealty to him before his Coronation, may appear from this Passage a little before his coming over: *Willielmus Rex Scotorum misit nuncios ad Johannem Ducem Normandia, &c.* where you see he calls him no more than Duke of *Normandy*.

But to come to the Election of his Son Prince *Henry*; if this be all you have to prove a Divine Right of Succession in *Henry III.* I doubt it will do you but little service; for according to your own Principles it must have been lodged somewhere else than in this Prince: for when King *John* his Father died, *Eleanor*, the Sister of Duke *Arthur*, was alive, and died not till the 25th Year of King *Henry*'s Reign, a close Prisoner in *Bristol*-Castle, as *Matthew Paris* relates. So that it is apparent he could have no such Divine Hereditary Right as you suppose; and therefore perhaps his Father, to strengthen his Title, and to recommend him the more to the Peoples Favour, appointed him his Successor by his last Testament: and *Matthew Paris*, and *Matthew Westminster* tell us, that when King *John* died, *Henricum Primogenitum suum Regni constituit heredem*. So that it seems there was then no such plain Hereditary Right; for if it had, what need had there been of this Testament?

But for all this Right, I do not find that this poor Princess *Eleanor* had any of the Bishops or great Lords to take her part, but all the Dispute then was at this great Convention at *Gloucester*, whether they should abjure Prince *Lewis*, whom most of them had before chosen for their Lord, and adhere to Prince *Henry*, there present before them, as *Matthew Paris* tells us; *Erat autem eâ tempestate inter Optimates Anglia fluctuatio maxima, cui se Regi committerent; Juvenine Henrico, an Domino Ludovico?* So that it seems, by the Relation our Historians give us of this matter, it was not from any great sense that the Clergy and Nobility had of the Justness of Prince *Henry*'s Title, that made them agree to chuse him King; but the Hatred they then bore to Prince *Lewis*, when they found he had broken his Contract with them, and put all the strong places of the Kingdom into the hands of *Frenchmen*, and treated the *English* Nobility with Scorn and Contempt: and therefore no wonder if they prefer'd an innocent young Prince of their own Nation, who had never been guilty of his Father's Faults, before a Stranger, whose fraudulent Dealing with them they had found not to answer their Expectations. And therefore *Mat. Westminster* tells us, that *omnes Nobiles Terræ in brevi ipsi juveni Regi Henrico, qui nihil culpæ versus eos meruerat, fideliter adhaeserunt*.

But to prove farther, that this King came in by Election, and not by Succession, appears by what our Historians relate concerning the manner of it: *Henry de Knyghton*, in his Chronicle, tells us, that on the Feast of St. *Simon* and *Jude*, *Henry*, Son of King *John*, in Regem erigitur viribus, & industria Gualonis Papæ Legat; which plainly shews that he was not King before: and I desire no better an Authority than your own Author, *Matthew Westminster*, who says, that he was in Regem inunctus, anointed to be King; which shews that he thought him not so before his Coronation. And tho' grant *Mat. Paris* makes the Earl *Marshal* to begin his Speech with those words, *Ecce Rex vester!* as you relate them; yet this was no more than an Allusion to that place in St. *John*, Chap. 19. *Behold your King!* it being usual in those days to begin their Speeches with a Text of Scripture. So that the Earl did not intend to be understood literally, for then he should have in this Speech contradicted what he had said before: for tho' to prepossess their Minds, he says of the young Prince there present, *Behold your King!* yet it is plain, that how much soever he thought the Kingdom his Right, yet that it could not be conferred upon him without their choice; as appears by these words, which you your self have made use of, *viz. You ought to chuse him, to whom the Kingdom is due.* And it is evident by the

Assent

Mat. Paris,
f. 574.

Mat. Paris,
f. 288.
Mat. Westm.
f. 276.

P. 145.

Col.

Assent which the whole Assembly gave to the Reasons declared by him in this Speech, that it was their Choice alone that made him King, their Votes being given in these words, *Fiat Rex*; which had been altogether needless, had they looked upon him as King already. And therefore the Speech of *Hubert de Burgh*, which you mention, may very well be reconciled to this Hypothesis, of supposing a Necessity of an Election and Coronation to confer a full and legal Right in those times: for when he said, *That the King, if dead, had yet left behind him Children who ought to succeed him*; this, if strictly taken, is altogether false: for *Eleanor*, the true Heiress of the Crown (according to your Rule of Succession) was then alive: but, if taken in a limited sense, is true, that is, the Children ought to succeed if the great Council of the Nation thought fit; without whose Consent, tho they might have *jus ad rem*, yet had they not *jus in re*: this Election and Coronation being then looked upon, as Livery and Seisin at this day is to an Estate in fee, without which, tho the Writings are sealed and delivered, the Land will not pass.

To conclude: I pray answer me that Question I have so long put, tho without any Reply, *viz.* Why, before this Election and Coronation was perform'd, none of those Princes that came to the Crown by your supposed Right of Succession, are call'd by any higher Title than Dukes of *Normandy*, or Earls of *Poictou*? So that from what has been here said, I think it plainly appears, that no less than seven of the eight Princes from your *William the Conqueror* (reckoning him for one) to King *Henry III.* have owed their Title to the Crown, not to any Right of Succession, but either to the Election of the People alone, or else to the Will or Designation of the last King, confirm'd by the general Consent of the People given thereunto; and without which it would not have been good, according to the antient Custom of the *English Saxons* before your Conquest: where, besides the Testament of the King deceased, there was also required the Consent or Election of the great Council. So that you see here was no alteration made in the Form of our chusing our Kings after your Conquest from what it was before, for no less than seven or eight Descents: And when you can answer this, I shall then come over to your Opinion.

M. In answer to your Question, I shall not deny but that our Historians give all the Kings you mention no higher Titles than Dukes of *Normandy*, or Earls of *Poictou*, before their Coronations: which tho I suppose they might do from a foolish Superstition of that Age, which made them fancy that none were properly to be called Kings until they had been anointed, and solemnly crown'd by a Bishop; yet that they looked upon them as Kings indeed, appears in that they ordered and disposed of all publick Affairs, conferred Offices and Bishopricks, as if they were lawful Kings before your pretended Election, or the Ceremony of their Coronation; and also had Ambassadors sent to them from foreign Princes, as appears from your own Quotation out of *Hoveden*, of those that were sent by the King of *Scots* to King *John* before he was crowned; tho it is true he there styles him no more than Duke of *Normandy*. And this also may further appear by that Passage I have cited out of the same Author, that King *Richard* had Fealty sworn to him as King of *England* by all the Freemen of *England* before he was crowned, and you your self acknowledge the same Oath to be taken by the same Persons to King *John* before he came over to take the Crown.

And lastly, to make it yet plainer that there was no Vacancy or Interregnum in all these Successions you have mention'd, consult what Chronologer you please, or look into the most antient Tables of the Succession of our Kings of *England*, or into our old printed Statutes or Law-Books, and you will still find the Reign of the succeeding Prince to commence from the Death of his next Predecessor, without any Vacancy or Interregnum between. And these I think to be a great deal surer Marks of their succeeding to their Royal Dignity, by a pretence at least of a Right of Inheritance from the Father or Brother, rather than this Fancy of yours that you lay so much stress upon, That because of their not being stiled Kings by our Historians till their pretended Election and Coronation was over, they were not so indeed. And I hope this may serve to satisfy this mighty Objection.

E. I must beg your pardon if I still declare my self not satisfied with your Answers: for tho I grant, that if this Argument of the Historians not stiling them

them Kings, had stood single, without any thing else to support it, your Answers might have signified something; yet if you please to consider it, you will find that none of these Princes (taking in *William* your Conqueror) claimed, as your self must acknowledge, by any Hereditary Right, but by the Testament of the deceased Predecessor; and if so, where was your settled Right of Succession by Right of Blood? Secondly, it is likewise as plain, that these four were never admitted or acted in *England* as lawful Kings, till those Testaments were confirm'd by the Election of the great Council, before whom they declared their Rights: and till this was done, how the Throne could be otherwise than vacant, I cannot conceive. But as for two of them (whom you call downright Usurpers) viz. *Henry I.* and King *Stephen*, it is certain they could have no colour of a Title till their Elections; and if not till then, and that neither your next Heir of the Crown, nor yet they themselves took upon them the Title of Kings, was not this a Vacancy of the Throne in the mean time? suppose that time to have been but for the space of three or four days, as it was after the Death of King *William Rufus*.

In the next place pray consider, that upon the Death of every one of these Princes, we do not find the great Council of the Kingdom, which still assembled to elect the Successor, was ever call'd in their Names, but met by their own inherent Authority; for how could they be summon'd by the King before he took that Title upon him, which, as your self are forced to acknowledge, he never did till after his Coronation?

Lastly, pray remember farther, that whoever was thus elected and confirm'd by the great Council, whether he was next Heir by Blood or not, was always looked upon as lawful King, and has always passed for such in all our Chronicles and Laws, and not those that claimed as the right Heirs by Blood. And if this be not sufficient to prove that these Princes had no true and compleat Right to the Crown till this Election was past, I desire you would shew me my Mistake.

These things premis'd, I think it will be very easy to reply to every one of those Answers you pretend to have made to my Query: Therefore as to your first, That they were really Kings before their Election or Coronation, because they ordered and disposed of all publick Affairs, I do not deny but that some of them, who succeeded either as Heirs by Testament, or by Right of Blood, might do many publick Acts, by reason that they looked upon themselves as Heirs apparent to the Kingdom, and whom the great Council, I grant, could not without high Injustice set aside: and upon this account they might also receive Ambassadors from foreign Princes, in Affairs relating to Peace or War, that they might know how to deal with them, or what to expect from them after they were settled in the Throne: yet that they sent not to them by the Title of Kings, appears by that Passage I cited out of *Hoveden*. But I defy you to shew me any one Instance that any of these Princes above-mention'd ever took upon them to exercise any of those Prerogatives of Sovereign Power; such as making War or Peace, enacting Laws, coining of Mony, before their Election and Coronation; which tho in some of them was done both at once, yet in others it appears plainly to have been at different times, and not upon the same day, as it happen'd in the case of *Henry I.* whose Election was at *Winchester* upon *Saturday*, and his Coronation was not till the next day: as also that of *Henry III.* whose Election was upon *St. Simon and Jude's* day, but his Coronation upon the day after.

But as for your next Reply, which I grant to have been the strongest you have made, that King *Richard I.* and King *John* had both of them Homage and Fealty sworn to them as Kings, by all the Freemen of *England*, before they were crowned: This were a material Argument if it were made out, as I think it cannot be; for in the first place, the bare swearing of Homage and Fealty to a Prince doth not make him immediately King, tho I grant it might give him in that Age a Right to be looked upon as Heir apparent to the Crown. Thus *Henry I.* made all the Lords and great Men of *England* to swear Homage and Fealty to Prince *William*, his Son; and so after his being drowned, to the Empress *Maud*, his Daughter, which was the true reason why she looked upon her self afterwards as Heiress to the Crown. So likewise King *Stephen*, a little before his Death (at the great Council I have mention'd) caused all the great Men

Men of the Kingdom to swear Homage and Fealty to *Henry Duke of Anjou*, as his immediate Successor. So that you see this swearing of Fealty was in those days often perform'd before the Persons that received it were Kings indeed; and so I believe it was done in both those Instances you now give me: for tho I grant that *Hoveden* (as you cite him) relates that Homage was made, and Fealty sworn to *Richard I.* by the Title of King, yet it is very much to be doubted whether this was not only by a *Prolepsis*, or perhaps a slip of the Pen in this Author, since he writ this History long after King *Richard's* Death; and therefore unless we had the very words of this Oath, there is no certain Conclusion to be drawn from thence. And I think we may as well credit the Chronicle of Abbot *Brompton*, who likewise lived about the same time, and recites all this Affair almost in the same words with those in *Hoveden*; but there the Oath doth not run exactly in the same words as in this Author, but thus: *Quod unusquisque liberorum hominum totius Regni juraret quod fidem portaret Domino Richardo, Domino Angliæ, filio Domini Regis Henrici, &c. sicut legio Domino suo contra omnes mortales.* Where you see the Oath is not made to King *Richard* as King, but only as Lord of *England*; and that there is a great deal of difference between those two Titles, not only in Name, but in Substance, I have already proved, when I spoke of the Empress *Maud's* styling her self *Domina*, and not *Regina Anglorum*; tho she had Homage rendred, and Fealty sworn to her, not only in her Father's life-time, but also after her coming over again into *England*, in the Reign of King *Stephen*, by all that own'd her Title. And that *Hoveden* himself meant no more than this, appears by that Passage I have already taken notice of, *viz.* That *Hubert*, Archbishop of *Canterbury*, and *William*, the Earl *Marshal*, being sent over to keep the Peace, made all the Men of the Kingdom, as well of Cities as Boroughs, with the Earls, Barons and Freeholders, *Jurare fidelitatem & pacem Johanni Normannorum duci, filio Henrici Regis, filii Matildis Imperatricis, contra omnes homines:* where you see the Oath is taken to him only as Duke of *Normandy*, and not as King at all; and therefore you are mistaken to say that *Hoveden* mentions the like Oath to be taken to Duke *John*, as it was before to King *Richard*. P. 793

But I come now to answer your last Argument, whereby you would prove that there was no Vacancy or Interregnum in this Age; which is, because that our Chronicles and Tables of Succession do still begin the Reign of each King, from the day of the Decease of his Predecessor, without any Vacancy or Interregnum between them. To which I reply, That none of our antient Chronicles or Historians reckon thus, as I know of, but rather acknowledge a Vacancy of the Throne to have been between each Succession; and as for the Tables of the Succession of our Kings, when you can shew me one more antient than the time from which I grant the Crown of *England* began to be looked upon as a Successive, and not an Elective Kingdom, I shall be of your opinion. But admit it were so, since the Succession to the Crown had been for the most part mixed, partly Elective, and partly Hereditary, our Kings might, to maintain the Honour of their Title, still reckon their coming to the Crown immediately from the Death of the last Predecessor, tho there have been oftentimes some Days and Weeks between the one and the other, as I have now proved, and shall prove further by and by; which being but small Fractions of Time, are not taken notice of in the whole Account, which may be notwithstanding very agreeable to Law; for both my Lords *Dyer* and *Anderson* in their Reports do agree, "That the King, who is Heir or Successor, may write and begin his Reign the same day that his Progenitor or Predecessor dies."

M. It will be to no purpose to dispute this Point with you any longer, since I must confess that there were so many Usurpations in the Succession of most of those first Kings after the Conquest, that it is a difficult matter to prove any settled Rule of Succession to have been then observ'd in *England*; and therefore I only desire you to take notice, that tho it is true, King *Henry III.* was an Usurper for the first twenty five Years of his Reign, yet for all the rest of it, which was near thirty more, he was a true and lawful Prince: for *Eleanor* his Cousin being dead in Prison without Issue, and there being no more of that Line left, her Right wholly devolved upon King *Henry*, and he and his Children are to be from henceforth reckon'd to have a true Hereditary Right to the Crown without any Competitors.

And that this was so, will plainly appear from the Testament of King Henry III. (a Copy of which I have by me) where, tho he bequeaths a great many of his Jewels to the Queen, and a great deal of Mony to charitable Uses, yet for this Kingdom, and other Territories in France and Ireland, he makes no Bequest of them at all, either to Prince Edward his eldest, or to Edmund his youngest Son, tho his Father King John had bequeathed the Kingdom to him by his Will (as you have already shewed:) and what could be the reason of this? but that there being now no Title left to contest with his Son, there was no need of it. And therefore tho Prince Edward was absent in the Holy Land when his Father died, yet a great Council being call'd in his Name at London, he was there only recognized and acknowledged to be their natural Liege Lord, and Lawful Successor to his Father's Throne. Pray read the words as they are in Walsingham's Life of this King; *Edwardum absentem Dominum suum Legium recognoverunt, paternique successorem honoris ordinaverunt.* We meet not here with any thing like Election, which no doubt we should not fail to do, if there had been any such thing practised.

F. 49.

So likewise upon this King's Death, his Son King Edward II. by the like Right succeeded as Heir to his Father; and tho this Prince, by suffering himself to be too much guided by his Minions, fell at length into such irregular Courses, as procured him the Hatred and Ill-will of his Subjects to that degree, that by the disloyal and ambitious Practices of his lascivious Queen, he being made a Prisoner, a Parliament was call'd in his Name, who took upon them to depose him for his Misgovernment, contrary to all Law and Right: and tho his Son Prince Edward had hitherto join'd with his Mother against his Father, yet is he herein so far to be commended, that tho the Crown was offered him by Election of the Great Council, yet the same Author tells us, he swore that without his Father's Consent he would never accept it. Whereupon divers Messengers or Delegates being dispatched from the Parliament to the King, then Prisoner at Kenelworth-Castle, who telling him what had been done and concluded of at London, required him to resign his Crown, and permit his Son to reign in his stead; which with some reluctance he at last agreed to: and thereupon Prince Edward took the Crown, not by Election, as you set forth, but by the Cession and Resignation of his Father, as appears by the account which this King gave of it to the Sheriffs of all the Counties of England within a few days after his taking upon him the Crown; which Writ or Letter is still to be seen among the Rolls in the Tower, and is also published in Walsingham as a Proclamation; which because it will give very great light in this matter, I pray now read it at length: *Rex, Vicecom. Ebor. Salutem; Quia Dominus Edwardus nuper Rex Anglia pater noster de communi consilio & assensu Prelatorum, Com. Baron. & alior. Magnat. necnon Communicat. totius Regni predicti. Spontanea voluntate se amovit a Regimine dicti Regni volens & concedens, quod nos tanquam ipsius primogenitus & heres Regni gubernationem & regimen assumamus, nosque ipsius patris nostri beneplacito in hac parte de consilio & avisamento Prelator. Com. Baron. Magnat. & Communicat. predicti. annuentes gubernacula suscepimus dicti Regni; & fidelitates & Homagia ipsorum Prelator. & Magnat. recepimus, ut est moris, teste Rege apud Westmonast. 29 Jan.* So that you here see this King takes no notice of the Deposition of his Father, or the Election of himself, but only that by the common Counsel and Assent of the Prelates, Earls, Barons, &c. the King his Father had, by his own free Will, removed himself from the Government of the Kingdom, and that therefore he had, by the Good-will of his said Father, and by the Counsel and Advice of the said Prelates, Earls, &c. taken the Government of the said Kingdom upon him.

B. H. S. p. 381.
Rot. Cl. 1. E.
3. P. 1. M. 28.
Part of it is
also in Walsingham,
f. 126.
M. 50.

But King Edward III. being dead, his Grandson Richard II. succeeded him, having been before recognized by Act of Parliament, as Heir apparent to the Crown in his Grandfather's life-time, immediately upon the Death of his Father Edward the Black Prince; so that he succeeded to the Crown, tho an Infant, and had great and powerful Uncles then alive: but by his ruling too arbitrarily, and being too much governed by Flatterers, he became hated of his Subjects, and thereupon gave occasion to Henry Duke of Lancaster (whom he had before banished) to come over and take the Kingdom from him without striking a stroke; who having taken the King Prisoner, call'd a Parliament in his Name, who took upon them most unjustly to depose King Richard,

chard, tho 'tis true he also made a solemn Resignation of it by his own seeming Consent: but it is certain it was forced from him, for fear of worse Usage if he refused it.

F. Pray give me leave to answer what you have now said, before you proceed farther in this History of the Succession. In the first place, I shall not deny but that from the Reign of King *Edward I.* the Crown has been always claimed (tho not constantly enjoy'd) by Right of Blood; yet that the Custom was otherwise before, I think the Instances I have given from the time of your Conquest, are more than sufficient: it is likewise as certain that this Succession, by Right of Blood, was never settled by any positive Law, and therefore must be purely derived from that tacit Consent of the People called Custom. Secondly, That the two Houses of Parliament have often, notwithstanding this Claim, placed or fixed the Crown upon the Heads of those Princes, whom they very well knew could have no Hereditary Right to it. Thirdly, That such Princes have been always obey'd, and taken for Lawful Kings, all their Laws standing good at this day, without any Confirmation by their Successors, tho they pretended to a better Title. Now if I prove every one of these three Propositions, I think the case will be very plain, that tho the Crown has been claimed and often enjoyed by Right of Blood, yet hath it been held near as often otherwise since that time: so that the Succession to it hath been still declared to be under the Direction and Limitation of the present King and Parliament.

This being premised, I shall proceed, in the next place, to answer what you have said concerning King *Edward* the First's being only recognized, and not elected King by the Parliament. It is plain from this History, that the Great Council still maintain'd their ancient Right of assembling upon the Death of the King, and of judging who should be his Successor, and that without any Summons from him: which will serve to justify (as do all the other Instances aforegoing) that the late Convention meeting, and settling the Crown without any Writs or Authority derived from King *James*, was no new thing; but that they have therein done no more than what hath been antiently practised in like cases: and tho ('tis true) the word in *Walsingham* is *recognoverunt*, yet there are also other words which seem to intimate, that it was then in the power of the Great Council whom to declare for lawful Successor. The words are, *Paternique Successorem honoris ordinauerunt*; that is, they ordain'd or decreed him Successor of his Father's Dignity: which sure is somewhat more than a bare Declaration of an undoubted precedent Right. And what Power the Great Council was then looked upon to have in the ordering of this Kingdom, appears by that Writ of *Dedimus*, for all Mens taking the Oaths of Allegiance in the Country; which is still to be seen in the close Rolls, and begins thus: *Quia defuncto jam celebris memoria Domino Henrico patre nostro, ad nos Regni Gubernaculum successione Hereditaria Procerum Regni voluntate & fidelitate nobis praestita sit devolutum, &c.* Where, besides the Hereditary Succession, the Goodwill and Fidelity of the Great Men is reckon'd as one of the means by which the Kingdom came to him. And that this Course was also observed upon the Accession of his Son *Edward II.* to the Crown, seems likewise as evident from the same Author, who tells us in the beginning of the Life of this Prince, that he succeeded his Father King *Edward*, *non tam jure Hereditario, quam unanimo consensu Procerum & Magnatum*: Which Observation had been altogether needless, had an unalterable Hereditary Right to the Crown been then settled.

But as to what you say of King *Edward* the Third's Right, whilst his Father was living, that it was wholly due to his Resignation, tho the place I cited out of *Walsingham* be express in this point; yet against this you urge a Writ or Declaration, as also a Proclamation of this King's, wherein he thus sets forth his Title, *viz.* "That by the voluntary Resignation of King *Edward* his Father, and by the Counsel and Advice of the Prelates, Earls, and "Barons, &c. he had taken upon him the Government of the Kingdom:" and consequently that succeeding immediately upon his said Father's Resignation, there could be no Vacancy of the Throne. To which I answer, that I do not deny that after this King was once settled in the Throne, he might think it most to his Honour, and the Independency of his Title, to rely wholly upon his Right of Succession as eldest Son and Heir, without taking

any notice of the Parliament's Election of him; tho this be also covertly expressed in these words, which are in this Writ and Proclamation, viz. "That consenting to his said Father's pleasure, he had taken the Government *de consilio & advisamento Prelator. Com. Baron. Magnat. & Communitat. predict.*" which tho you translate by the Counsel and Advice of the Prelates, Earls, Barons, and Commonalty, yet I do suppose that by *Consilio* is here meant not Counsel, but Consent, as I have already proved the word *Consilium* often signifies in our ancient Statutes; for otherwise if this word must here signify Counsel, it would be a plain Tautology, for Advice and Counsel are the same thing.

But to shew you also that there must needs have been a Vacancy of the Throne, either upon the Deposition or Resignation of *Edward II.* (take it which way you will) it appears from matter of Fact; for it is plain, that when Prince *Edward* refused the Crown upon the Parliament's electing him, unless his Father would willingly resign it, he did at their Request resign his Title to it, by certain Commissioners sent down to him to *Kenelworth*-Castle to take it. Now that Place being at least two days Journey from *London*, it is certain there must be as many days Vacancy of the Throne, if not more, before the said Commissioners could get to *London*, and that Prince *Edward* had agreed to take the Crown upon his Father's Resignation; for till then the Throne was vacant, since till the Prince had declared his Assent to take it, he might have chosen whether he would have accepted it or not, as not being satisfied whether his Father's Resignation was voluntary, and not by constraint. Now if there were a Vacancy of the Throne in this case, tho but for two or three days, it serves to prove the matter in question, as well as if it had been for two years.

So likewise let the Reign of King *Henry IV.* begin either from the Resignation or Deposition of King *Richard II.* (take it which way you please) there must have been a Vacancy of the Throne, as appears by the Parliament-Roll still extant: For it is there plain, that after the Instruments of King *Richard's* Resignation and Deposition were solemnly read, the Throne continued void for some space, till such time as *Henry* Duke of *Lancaster* stood up and made his Claim to it, in that form of words which stands to this day to be seen upon the Parliament-Roll; and that the Archbishop of *Canterbury*, taking the Duke by the hand, had led him to the Throne, and placed him thereon.

M. I cannot deny, but as you have set forth the matter of Fact, there must have been a Vacancy of the Throne in these two Cases; but since the Depositions of both these Kings were contrary to Law, and their Resignations extorted from them by constraint whilst they were in Prison, they are neither of them looked upon as valid, or to be urged as Precedents in future times. But however the Throne might seem then to be vacant in point of Fact, yet in Law it was otherwise; for *Edmund* Earl of *March* ought to have immediately succeeded upon the Death or Resignation of King *Richard*, as being lineally descended from *Philippa*, only Daughter and Heir to *Lionel* Duke of *Clarence*, third Son of King *Edward III.*

But to let you see that *Henry* Duke of *Lancaster* (as much an Usurper as he was) was sensible that the Crown could not be then enjoyed by Election, but by Right of Blood; and that the Parliament also thought themselves in Duty bound to submit to him, to whom by Right of Blood the Crown did belong, will appear from this Duke's manner of laying Claim thereunto; which since you have not particularly mentioned, I will: For no sooner was the Throne vacant, by the pretended voluntary Resignation of King *Richard*, but Duke *Henry*, having fortified himself with the sign of the Cross, stood up, and made his Demand of the Crown in his Mother-Tongue, in this form of words (as I have extracted them out of the Parliament-Roll.)

Vid. Rot. Parl.
10 Hen. 4. 20.

In the Name of the Father, Son, and Holy Ghost.

I Henry of Lancaster challenge this Reawme of Inglonde, and the Corone, with all the Members and Appurtenances; also that I am descendit by Right Line of the Blode, comyng fro the gude Lord King Henry the Third: And thogh the that might, that God of his Grace hath sent me, with the help of my
Ryn,

layn, and of my friends to recover it: The which Reaſone was in poynt to be undone by default of Governace and undoyng of the gude Laws.

“ And after which Challenge and Claim (ſays the Record, which I render
“ out of *Latin*) as well the Lords Spiritual as Temporal, and all the States
“ there preſent, being all ſeverally interrogated, what they thought of the
“ aforeſaid Challenge and Claim; the above-named States, with all the Com-
“ monalty, without any Difficulty or Delay, unanimouſly agreed, that the
“ aforeſaid Duke ſhould reign over them.” Where you may ſee, that this
whole Parliament admits the Duke’s Claim for good, without proceeding to
any formal Election of him.

And by virtue of this ſham Titic, and claiming as Heir of Earl *Edmund*,
(ſurnamed Crouch-back) Brother to King *Edward I.* (whom he falſly pretended
to have been the eldeſt Son to King *Henry III.* and put by for his Deformity)
not only *Henry IV.* but alſo his Son *Henry V.* and his Grandſon *Henry VI.* (tho
Uſurpers) did ſucceed as right Heirs to the Crown, till the 39th year of *Henry*
VI. when *Richard* Duke of *York* did in a full Parliament lay Claim thereunto
in right of his Mother, being only Siſter and Heir of *Edmund* Earl of *March*.
And becauſe the Judgment of the Parliament in this Caſe is very remarkable,
pray read this part of it, as it ſtands recorded in the Parliament-Roll:
“ Where upon conſideration of the Answer, and Claim of the Duke of *York*,
“ it was concluded and agreed by all the Lords, that his Title could not be
“ defeated; and therefore for eſchewing the great Inconveniencies that may en-
“ ſue, a Mean was found to ſave the King’s Honour and Eſtate, and to ap-
“ pleaſe the ſaid Duke if he would; which was, that the King (*viz.* *Henry*
“ *VI.*) ſhould enjoy the Crown during Life, the Duke to be declared the true
“ Heir, and to poſſeſs it after his Death, &c.” And note, that all this was
done after a ſolemn Hearing of all that could be ſaid on both ſides.

Vid. Rot. Parl.
39 Hen. 6.
M. 18.

F. I confeſs the matter of Faſt, concerning King *Henry* the IVth’s coming
to the Crown, is truly recited by you from the Parliament-Roll; yet for all
that it doth not follow, that the Parliament allowed this King’s feigned and
faſe Claim to be good, by their not contradicting it. For tho the Record
ſays, “ That upon the hearing of this Challenge or Claim, all the Eſtates
“ of the Kingdom being then asked their Judgments ſeverally, declared,
“ without any Difficulty or Delay, and unanimouſly agreed that the ſaid
“ Duke ſhould reign over them:” Yet conſidering the Duke’s great Power,
it was not ſafe telling him to his face, that he had no true Right by In-
heritance; therefore they only declared in general words, without expreſſy
denying or affirming his ſaid Claim, *That he ſhould reign over them*: which
words do rather amount to an Election of him to be King, without declaring
what Title he had to be ſo. And this they thought they might very well juſ-
tify, not only for his having delivered them from the Tyranny of King *Rich-*
ard, but alſo becauſe they then looked upon it as their Right, not only to de-
poſe the King in caſe of an apparent Violation of the fundamental Laws of the
Kingdom, but alſo to place in his ſtead any of the Blood Royal, tho not next
Heir by Blood; according to the Meſſage the whole Parliament had formerly
ſent to King *Richard*, in the beginning of his Reign, by the Archbiſhop of
Canterbury, and his Uncle the Duke of *Gloceſter*, which I gave you at our ninth
Meeting (as I remember.) And pray take notice the words were, *Et propin-*
quiores aliquem de ſtirpe Regia, loco ejus in Regni folio ſublimare; where ob-
ſerve, that the words were not the next of Blood, but ſome near Kinfman of
the Blood Royal.

H. Knyghton,
col. 2631.

And tho it is true that King *Henry V.* and *VI.* might both ſeem to ſuc-
ceed to the Crown by Right of Blood, yet I do rather attribute their Right
of Succeſſion to an Act of Parliament made in the ſeventh, and confirmed in
the eighth year of *Henry IV.* whereby the Crown was entailed upon all his Sons
by name, and the right Heirs of their Bodies; by virtue of which Settlement,
both *Henry V.* and *VI.* ſucceeded thereunto. For if he had thought his own
feigned Hereditary Title to have been ſufficient, he would never have troubled
himſelf to have procured the Crown to be ſettled upon himſelf and his Chil-
dren by Act of Parliament.

Vid. 7 Hen. 4.
cap. 2.

1. H. S. pag.
3 c.

M. All this signifies nothing ; for I have already sufficiently proved, that in the 39th year of *Henry VI.* upon a solemn hearing before the Parliament of the Claim of *Richard Duke of York* to the Crown, the said Act was set aside ; and it was there exprelly declared, “ That the said Duke’s Title could “ no ways be defeated.” And this Agreement is still on Record, between *Henry*, the then Possessor of the Crown, and the said Duke (whose Right it was) and the Judgment of the Parliament was then given in behalf of Proximity of Blood, as to have always been the Foundation and Ground of Succession to the Crown of *England*, and of taking it from the Son of *Henry VI.* and restoring it to the Duke of *York* and his Issue as right Heirs thereof : as appears by the Title and Pedegree of the said Duke, set down at large in the first Article of this Agreement confirmed by Parliament ; that is, by King *Henry VI.* himself, who was then King *de Facto*, tho not *de Jure*.

F. I will not deny the matter of Fact to be as you have set forth ; yet if you will but please to consider the time when this Declaration and Agreement was obtained, and the manner how it was done, you will quickly find, that it was rather got by Force and Constraint upon that poor Prince *Henry VI.* than by any real Right the Duke of *York* had to the Crown, after its being settled for three Descents in the House of *Lancaster*.

Vid. Grafton’s
Chronicle.

For the proof of which I desire you, in the first place, to take notice, that at this time the whole Kingdom was under general Discontent, not only for the loss of all our Conquests in *France*, but also for the great Mismanagement of Affairs at home, by reason of the exorbitant power of the Queen, and her two Favourites, the Dukes of *Somerset* and *Suffolk*, who made the King a mere Cypher, and had, without his Consent, made away *Humphry Duke of Gloucester* (the King’s only Uncle then living) contrary to Law. So that Affairs being in this ill Posture, it was very easy for the Duke of *York* and the Earl of *Warwick* to procure a sufficient Interest in the Nobility and great Men of the Kingdom, to raise an Army, on pretence at first only of reforming the Grievances of the Kingdom, and bringing the said Dukes to Justice ; the Issue of which War was, that the Duke not being strong enough at first to oppose the King’s Forces, was forced to surrender himself ; and to obtain his Pardon, took a solemn Oath never to rebel against the King again. But being afterwards attainted at a Parliament held at *Coventry* for new Conspiracies, he then again rebelled, together with the Earl of *Warwick* : and then King *Henry* being carried to head his Army, was by the Duke of *York* taken Prisoner in the Battle near *Northampton* ; and being thence by him brought up to *London*, a Parliament was called in the King’s Name (tho without his Consent) wherein the Duke of *York* had the Confidence to seat himself in the Royal Throne, and to make that Challenge of the Crown you have recited. And under how great a Terror all the Friends and Servants of this poor Prince were at that time, appears plainly from this, that neither the King’s Attorney, nor any of his Council durst undertake to plead his Cause before the Parliament, nor yet would the Judges give their Opinions in a matter of such great moment ; but they all answered, “ That this Matter passed the Learning of the Justices, and also “ that they durst not enter into any Communication concerning this Matter, “ and besought all the Lords to have them excused for giving any Advice or “ Counsel therein ; but the Lords would not excuse them : and therefore, by “ their Advice and Assistance, it was concluded by all the Lords, that the Articles following should be objected against the Claim and Title of the Duke.” So that you see from the Record it self, that the Judges were with much ado prevailed with to object any thing against the Duke’s Title.

Vid. Record,
39 H. 6. n.
11, 12, 13.

Therefore considering the Contempt the King’s Person was then under by reason of his Weakness, and the great Hatred and Weariness the Nation had then of the evil Government of the Queen and her Favourites, it was no more difficult for the Duke of *York* to procure this Judgment in Parliament in favour of his Title, than that *Henry IV.* should, after he had put *Richard II.* in Prison, get him deposed, and make his own Title to be allowed for good. And certainly if it were Rebellion for the Duke of *Lancaster* to take up Arms against King *Richard II.* and to depose him, I cannot see why (according to your own Principles) it should not be the same Crime in the Duke of *York* to take up Arms against King *Henry VI.* to whom he had more than once sworn Faith and

and Allegiance; and having taken him Prisoner, to call a Parliament without his Consent, whereby himself was declared Protector of the Kingdom, and the Son of King *Henry* disinherited after a quiet possession in three Descents, during the space of above sixty years: which if it will not give a thorow Settlement, after two Acts of Parliament to confirm it, I know not what can.

M. I confess you have given me a more exact account of this Transaction than ever I yet had; and I should very much incline to be of your Opinion, were it not that I am satisfied that our Kings have a Right to the Crown by God's Law as well as Man's, as also by the Law of Nature. And that more than one Parliament have been of my Opinion in this Matter, I shall shew you from several Statutes and Declarations of Parliament; which tho not printed, are yet to be seen at this day upon the Parliament-Rolls. For after that *Henry VI.* or rather his Queen for him, had broken the aforesaid solemn Agreement made between this King and Duke in Parliament, whereby it was accorded, that if King *Henry* made war again upon the Duke of *York*, he should then forfeit his present Right to the Kingdom during Life; Queen *Margaret*, and her Son Prince *Edward*, who would not submit to this Agreement, renewed the War, and fighting another Battel at *Wakefield*, the said Duke was slain. But tho he did not live to enjoy his Right, yet his Son *Edward* Earl of *March* again recovered it; and having in the second Battle of *St. Albans* taken King *Henry* Prisoner, triumphantly marching to *London*, he there declared himself King. And having immediately called a Parliament, it was therein declared, "That all the Proceedings against King *Richard II.* are repealed, and the taking him Prisoner by *Henry* Earl of *Derby* was declared against his Faith and Allegiance, and that with Violence he had usurped upon the Royal Power and Dignity, &c. and that he had by cruel Tyranny murdered and destroyed the said King *Richard*, his Liege and Sovereign Lord, against God's Law, and his own Oath of Allegiance."

Vid. Grafton's Chronicle.

Parl. Rolls, 1 Edw. 4. n. 8, 9, 10, 11, 12, 13. B.H.S. p. 388.

And then they proceed further to declare in these words: "That the Commons of this present Parliament having sufficient and evident Knowledge of the said unrightwise Usurpation and Intrusion by the said *Henry*, late Earl of *Derby*, upon the said Crown of *England*; knowing also certainly, without Doubt and Ambiguity, the Right and Title of our said Sovereign Lord (*viz.* King *Edward IV.*) thereunto true, and that by God's Law, Man's Law, and the Law of Nature, he, and none other, is and ought to be their true, rightwise, and natural Liege and Sovereign Lord, and that he was in Right from the Death of the said noble and famous Prince his Father, very just King of the said Realm of *England*, and will for ever take, accept, and repute the said King *Edward IV.* their Sovereign and Liege Lord, and him and his Heirs to be Kings of *England*, and none other, according to the said Right and Title.

Ibid.

"And that the same *Henry* unrightwisely, against Law, Conscience, and the Customs of the said Realm of *England*, usurped upon the said Crown; and that he, and also *Henry*, late called King *Henry V.* his Son, and *Henry*, late called *Henry VI.* his Son, occupied the Realm of *England* and Lordship of *Ireland*, and exercised the Governance thereof by Unrightwise, Intrusion, Usurpation, and no otherwise: That the Amotion of *Henry*, late called King *Henry VI.* from the Exercise, Occupation, Usurpation, Intrusion, Reign and Governance of the said Realm and Lordship, done by our Sovereign Lord King *Edward IV.* was and is rightwise, lawful, according to the Laws and Customs of the said Realm, and so ought to be taken, holden, reputed and accepted."

Ibid. p. 389.

I have been the larger on this Point, because it is a full and free Declaration of the whole Parliament, not only against all past as well as future Parliaments having any thing to do in the Disposall of the Crown, but is also as expresse a Declaration as words can make, against any Vacancy of the Throne upon the Death of the Predecessor; and therefore I hope you will pardon me, if I have been a little too tedious in reciting these Records.

F. I cannot blame you for being very exact in this Point, because the whole strength of your Cause depends upon it: But yet I doubt not but to shew you, that this Parliament was as much awed by King *Edward's* Power, being now Conqueror, as ever those Parliaments were that deposed *Edward* and *Richard* the

the Second ; for you your self have sufficiently set forth the manner of it, that it was not till after a great Victory obtained against King *Henry VI.* And I never found, in all my reading, that a victorious Prince ever wanted power enough to get a Parliament called to settle himself in the Throne, and declare his Competitor an Usurper, as I shall shew you more fully by and by. But this Act of Parliament, which thus positively declares *Edward IV.* to be their Sovereign Lord, by God's Law, Man's Law, and the Law of Nature, I think can no ways consist either with Scripture, Reason, or Matter of Fact. For, in the first place, I think I have sufficiently proved, that there is no Divine Right of Succession for the Heirs of Crowns, any more than of other Inheritances, either by the Law of God, or that of Nature : and as for Man's Law, I think I have here also proved, that the Succession to the Crown, by Right of Blood alone, was never established by any positive Law, nor yet settled by any constant or uninterrupted Custom, when this Declaration was made ; for the Crown had then never descended from Father to Son for above two Descents without a Deposition, or possessed by those who claimed by Right of Blood, without any other Title. For as for the three Kings of the House of *Lancaster*, I have already proved (and you your self must also own it) that they could have no Title to the Crown, but from the Acts of Entail of the 7th and 8th of *Henry IV.* above-mentioned ; so that according to Man's Law (that is, Custom) and also the Statute-Law of this Kingdom, the House of *Lancaster* had all that time the better Title.

Vid. Grafton's
Chronicle.

But to shew you what uncertain things Parliaments are, when King *Edward IV.* had reigned ten years, he was driven out of the Kingdom by the Earl of *Warwick's* turning suddenly against him, and in his absence he replaced King *Henry VI.* upon the Throne, who had been all this while kept in Prison. And the first Act this King did, after his Restoration, was to call a Parliament, which revoked all the former Statutes and Declarations of the 39th of *Henry VI.* and 1st of *Edward IV.* and then entailed the Crown anew upon the Issue of King *Henry*, the remainder to the Duke of *Clarence*, who then took part with King *Henry* against his own Brother.

'Tis true indeed, that King *Edward IV.* returning again not long after into *England*, and regaining the Crown from King *Henry VI.* the said King was not only murdered, together with his Son Prince *Henry*, but in the next Parliament was also attainted of Treason, with all others of his Party. And to let you see that this very Act is now null and void against King *Henry VI.* and his Son Prince *Edward*, see an Act of Parliament of the 1st of *Henry VII.* (not printed) which because it is not commonly known, I will read it almost *verbatim* :

Rot. Par. 1 H.
7. n. 16. Re-
stitutio Henrici
sexti.

" The King, our Sovereign, remembring how against all Rightwiseness, Honour, Nature, and Duty, an inordinate, seditious, and slanderous Act was made, against the most famous Prince of blessed Memory, King *Henry VI.* his Uncle, at a Parliament holden at *Westminster* the 4th day of *November*, the 1st year of the Reign of *Edward IV.* late King of *England*, whereby his said Uncle, contrary to the due Allegiance and all due Order, was attainted of High Treason ; wherefore our same Sovereign Lord, by the Advice and Assent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by Authoritys of the same, ordaineth, enacteth, and establisheth, that the same Act, and all Acts of Attainder, Forfeiture, or Disablingment made or had in the said Parliament, or else in any other Parliament, of the said late King *Edward* against the said most blessed Prince King *Henry*, or against the right famous Princess *Margaret*, late Queen of *England*, his Wife, or the right victorious Prince *Edward*, late Prince of *Wales*, Son of the same blessed Prince King *Henry* and *Margaret*, &c. are void, annulled, and repealed, and of no force nor effect." So that by virtue of this Act, the Title of the House of *Lancaster* was again declared to be good.

But to conclude ; I cannot but take notice of one Mistake you have fallen into, by saying, that all Proceedings against King *Richard II.* are repealed by that Parliament of the 1st of *Edward IV.* which is not so : for tho I grant that the Dealings of *Henry* Earl of *Derby* (as he is there called) in imprisoning the said King, and usurping the Royal Power, is there expressly condemned, and his murdering of him said to be against God's Law, and his own Oath of Allegiance

Allegiance (as certainly it was ;) yet the Deposition of the said King *Richard* by Parliament is no ways repealed by this Act, for then all the Records thereof would have been quite cancelled and taken off the Rolls, whereas they still remain to be seen at this day. And you see by this Act I have now recited, "That the Attainder of King *Henry VI.* is declared contrary to due Allegiance and all due Order, and all Forfeitures and Disablements of the said King and Prince are quite annulled and made void."

M. I must confess you have so staggered me with this Act, that I know not what to say to it, but that it was made in the first Parliament of King *Henry VII.* and before he had married the Princess *Elizabeth*, and consequently had no good Title to the Crown himself; therefore till then I look upon him as an Usurper. But I shall now proceed to shew you, that that very King, nay even *Richard III.* himself, chiefly relied, not upon any Parliamentary Election, but upon their own pretended Title of being right Heirs by Blood: for after the Death of *Edward IV.* his Son *Edward V.* was proclaimed King, and might have quietly enjoyed it, if his ambitious Uncle *Richard Duke of Gloucester* had not plotted to defeat him of it; knowing well that he had no way to bring it about, but by inciting a corrupt Party of the Bishops and Lords, together with the Lord Mayor of *London*, and some of his Party in the City, to set forth by way of Petition to the Duke, then Protector of the King and Realm, "That all the Children of King *Edward IV.* were Bastards, supposing that King to have been contracted with a certain Lady called *Eleanor Boteler*, before he married Queen *Elizabeth*; moreover, that the Blood of his elder Brother *George Duke of Clarence* deceased was attainted, so that none of the lineal Blood of *Richard Duke of York* could be found uncorrupted but in himself." And there was, at the Conclusion of that Roll, an Address to him from the Lords and Commons of the Kingdom, that he would take the Government upon himself. This fine Artifice, assisted with his feigned Excuses, which induced the less-thinking sort of People to believe he desired not the Royalty; and prompted on the other side with the fear of his power, procured his Accession to the Throne: so that at last he and his Wife *Anne* were solemnly crowned King and Queen at *Westminster*; and by these steps did that inhuman Prince, who had no Title to the Crown either by Descent or by Merit, ascend the *English* Throne. Now you see that not by Election, but by pretence of Blood, and by bastardizing and attainting his Nephews, he set himself up for the true Heir of the Crown; and therefore in the Parliament he called immediately after his Coronation, when they had declared almost the very same things as were before in the said Petition, they proceed further, "to declare that the Right, Title, and Estate which King *Richard III.* had to and in the Crown and Royal Dignity of the Realm of *England*, with all things thereunto, within the said Realm and without it, annexed and appertaining, was just and lawful, as grounded upon the Laws of God and Nature, and also upon the antient Laws and laudable Customs of this said Realm, as also taken and reputed by all such Persons as were learned in the abovesaid Laws and Customs." And they proceed farther thus: "Therefore at the Request, and by the Assent of the three Estates of this Realm (that is to say, the Lords Spiritual and Temporal, and Commons of this Land) assembled in this present Parliament, and by the Authority of the same, it is pronounced, decreed, and declared, that our said Sovereign Lord the King was and is the very undoubted King of this Realm of *England*, with all things thereunto belonging within the said Realm, and without it, united, annexed, and appertaining, as well by Right of Consanguinity, and Inheritance, as by lawful Election, Consecration and Coronation."

Vid. Grafton's Chronicle.

Vid. Collection of Records, 1 Richard 3.

So that you see tho they put in his Election, as also his Coronation, as means of obtaining the Crown; yet the pretended Hereditary Right of Blood was the main ground of his Establishment. But as for King *Henry VII.* tho he could claim the Crown by no true Right of Inheritance, yet would he never own it to be an Election by Parliament: for as soon as King *Richard* was slain in the Battel of *Bosworth*, the Lord *Stanley* put his Crown upon *Henry's* Head; who immediately styling himself King, as well by Right of Conquest, as by being sole Heir Male of the House of *Lancaster*, he as such, caused himself to be crown'd King: and tho he afterwards call'd a Parliament, in which he procured his

Vid. Lord Bacon's Life of *Henry VII.* fol. 7.

Title to be recogniz'd; yet, as my Lord *Bacon* well observes, he was afraid to take the Crown (by his only true Title) in "right of the Lady *Elizabeth* his Queen, for fear he should only be King by Courtesy, and must upon the Queen's Death have resign'd it again; and should he take it by Election, he knew there was a very great difference between a King that holdeth his Crown by a Civil Act of the Estates, and one (*mind that*) that holdeth it originally by the Law of Nature, and Descent of Blood: and therefore upon these Considerations, he resolv'd to rest upon the Title of the House of *Lancaster* as his main Right; and thereupon he caus'd an Act of Parliament to pass, wherein his Title was acknowledg'd (as my Lord *Bacon* there tells us) not by way of Declaration, or Recognition of Right, as on the other side he avoided to have it by a new Law of Ordinance, but chose rather a kind of a middle way, by way of Establishment, and that under covert and indifferent words; that the Inheritance of the Crown should rest, remain, and abide in the King, &c." which words might be equally applied, that the Crown should continue to him; but whether as having former Right to it (which was doubtful) or having it then in Fact or Possession (which no Man denied) was left fair to Interpretation either way. I speak not this to justify all his Actions, but to let you see that he chiefly insist'd upon his Right of Inheritance, and absolutely disown'd any Title by Election from the People.

F. I cannot deny the matter of Fact concerning King *Richard III's* deposing his Nephew, and usurping the Crown, to have been very wicked, and contrary to the receiv'd Law of *England* concerning the Succession at that time; and likewise that by bastardizing his Brother the late King's Issue without due course of Law, and by attainting the Blood of his other Brother the Duke of *Clarence*, he would have made the World believe that he was lawful Heir by Right of Blood: yet you cannot deny but that for all this, he was so sensible of the weakness of his Title, that tho (it is true) his Right by Blood is declar'd in the first place in that Act of Recognition, yet it is plain he would not rely upon that alone; and therefore you see the Parliament there also insists upon his Right by Election and Coronation, which they would never have done, had it not been that they look'd upon it for good Law, that whoever was crown'd King, and call'd a Parliament, and had his Title therein recogniz'd and confirm'd, was thenceforth true and lawful King to all intents and purposes. Therefore tho you have omitted it, I shall proceed to shew you, what this Statute also farther declares: For after they had declar'd the said King's Title, as grounded upon the antient Laws, and laudable Customs of the Realm, according to the Judgment of all such Persons as were learned in them; they proceed thus: "Yet nevertheless, forasmuch as it is consider'd, that the most part of the People is not sufficiently learned in the aforesaid Laws and Customs, whereby Truth and Right in his behalf, of likelihood may be had, and not clearly known to all People, and thereupon put in doubt and question; and over this, how that the Court of Parliament is of such Authority, that a Declaration made by the Three Estates, and by the Authority of the same, maketh before all other things most faithful and certain quieting of Mens Minds, and removeth the occasion of Doubts, and seditious Language; therefore they also declare that he was the undoubted King." Whence 'tis evident, that the Reason of this Law supposeth that the Subjects in general are not capable of understanding the Laws and Customs upon which the Titles of our Kings depend; and that the best Satisfaction that the generality of the People can possibly have in those high Matters, was to rest on the Judgment and Determination of the Kingdom, declar'd by Act and Authority of Parliament, and therein to acquiesce for the preventing Sedition: therefore what I said before in the Case of King *Stephen*, is also true in this, *quod fieri non debuit, factum valet*; and all the Acts made in the Reign of this King *Richard*, tho a horrid Usurper, were never repeal'd, but stand good at this day.

As to what you say concerning the manner of King *Henry VII's* coming to the Crown, it is also true; but as for his Title to it by Right of Succession, that was certainly false: for his Mother the Countess of *Richmond* was then alive, by whom he claim'd the Crown, and liv'd divers Years after he was King. So that tho I grant that it is recited in the Parliament-Roll that he claim'd the Crown in Parliament, *tam per justum titulum hereditantia, quam per verum Dei*
judicium,

judicium, in tribuendo sibi victoriam de Inimico suo in campo. Tho the latter of these Titles may be true, viz. the Conquest of King *Richard*, especially when once he was confirm'd and recogniz'd in Parliament, yet that the former could not be so, is plain from what I have now said; so that it is certain that King *Henry VII's* best Title was neither by Inheritance nor Marriage with the Princess *Elizabeth*, but by the Act of Parliament, as appears by the unprinted Statute it self, still upon the Roll; which since you did not repeat, I will: the Title is *Titulus Regis*, and it runs in these words; "To the Pleasure of Almighty God, the Wealth, Prosperity, and Surety of this Realm of *England*, to the singular Comfort of all the King's Subjects of the same, and in avoiding of all Ambiguities and Questions, be it ordained, established, and enacted by Authority of this present Parliament, that the Inheritance of the Crowns of the Realms of *England* and of *France*, with all the Pre-eminence and Dignity Royal to the same pertaining, and all other Seignouries to the King belonging beyond the Sea, with the Appurtenances thereto in any wise due or pertaining, be, rest, remain and abide in the most Royal Person of our now Sovereign Lord King *Henry* the VIIIth, and in the Heirs of his Body lawfully coming perpetually, with the Grace of God so to endure, and in none other."

Vid. Buck's History of Richard III.

Now this was done some time before he married with the Princess *Elizabeth*; for as soon as this Act was made, "the Commons requested the King to marry *Elizabeth*, the Daughter of King *Edward* the IVth, that by God's Grace there might be Issue of the Stock of their Kings," (as their own words were.) That this was rather to preserve the Blood-Royal, than to give any new Confirmation to his Title, appears from hence, that there was never any other Act after the Marriage to declare the Right of the Crown to be in the King and Queen, or so much as to entail it on the Issue of their Bodies: so that it is plain he enjoy'd it not in his Wife's, but in his own Right, since he held it after her Death by virtue of this Statute; which plainly shows, that (in the Judgment of that Parliament) the House of *Lancaster* was looked upon to have the better Title. And tho it is true that the King procured the Pope's Bull, now in the *Cotton Library*, to strengthen his Title, threatening all those with Excommunication that should offer to rebel against him; yet even that Bull (tho his Right by Inheritance and Conquest be first mentioned) concludes with his Title by the Election of the Prelates, Nobility, and People of *England*, and the Decree or Statute of the three Estates in their Convention, called the Parliament, as this Bull it self expresses it.

B. H. S. p. 391.

M. I must confess you have told me more of these matters than I ever heard of before, for I always thought that there had been no Act of Settlement upon King *Henry* the VIIIth, until after his Marriage with the Princess *Elizabeth*; for till then I look upon him as an Usurper upon her Right, as he was also after her Death upon his Son's successively: so that if you will have my Opinion, I conceive that this Statute, being made before he had a lawful Right to the Crown, is wholly void, as is also that of the Repeal of the Attainder of King *Henry* the VIth, for the same reason.

But let his Title be what it will, it is certain his Son, King *Henry* the VIIIth, succeeded to the Crown, as Heir rather to his Mother than his Father, and so was in by Remitter; but as for King *Edward* the VIth, he was undoubted Heir by Right of Blood, as being the only Heir Male to his Father: and tho it is true, that King *Henry* made divers Statutes, whereby he alter'd the Succession of the Crown, as to his two Daughters *Mary* and *Elizabeth*, sometimes declaring them both illegitimate, and then again giving them a Right to succeed by Act of Parliament; yet these Acts of Succession were obtain'd purely by the King's Solicitation and Command. And tho at last he got himself impower'd to make a Will, whereby he might settle and entail the Crown on whom he pleased; yet all these Acts of Parliament, as also this, signified just nothing after his Death: for tho his said Daughters, Queen *Mary* and *Elizabeth*, did one after another succeed his Son, King *Edward* the VIth, yet was it not by virtue of any of these Acts of Parliament, or by the aforesaid Will, but by pure Right of Inheritance (or colour of it at least;) and therefore in the first of Queen *Mary*, there is an Act declaring "the Queen's Highness to have been born in most just and faithful Matrimony, and also repealing all Acts of Parliament, or Sentence of Divorce, made or had to the contrary."

B. H. S. p. 393.

1 Mary, c. 2.

1 Eliz. c. 1.

Now certainly the Intention of this Act was to declare her Succession to be Inheritance by Right of Blood; so likewise in the first of *Elizabeth*, the "Lords Spiritual and Temporal, and the Commons, do declare and confess that Queen *Elizabeth* is in very Deed, and of mere Right, by the Laws of God, and by the Laws and Statutes of this Realm, their most rightful and lawful Sovereign Queen, and that she was rightly, lineally, and lawfully descended and come of the Blood-Royal of this Realm of *England*." All which (whether it were true or not in her) yet the lineal and lawful Descent of Queen *Elizabeth*, was the ground upon which she was declared to be their rightful and lawful Queen.

E. H. S. 394.

And tho I grant that King *Henry* the VIIIth had by his last Will and Testament postponed all the Issue of his Sister *Margaret* Queen of *Scots*, and preferred the Children of his younger Sister, the Queen Dowager of *France* (whom she had by *Charles* Duke of *Suffolk*) before them; yet was this Will afterward cancelled, and torn off from the Rolls in Chancery, where it was recorded, and that by order of Queen *Mary* (as is supposed.) So that *James* the VIth, King of *Scotland*, was by Right of Blood declared and proclaimed King of *England* immediately upon the Death of Queen *Elizabeth*, as right Heir of the Crown: And in the first Parliament after his Coronation, his Title is by them particularly recognized in the words, which I desire you to read with me; "where after setting forth his Pedegree, as lineally descended from the Lady *Margaret*, eldest Daughter of King *Henry* the VIIth, and Queen *Elizabeth* his Wife, Daughter of King *Edward* the IVth, they farther acknowledge King *James* their Lawful and Rightful Liege Lord and Sovereign; and farther say, as being bound thereunto both by the Laws of God and Man, that they do recognize and acknowledge, that immediately upon the Dissolution and Decease of *Elizabeth*, late Queen of *England*, the Imperial Crown of the Realm of *England*, and all Kingdoms and Dominions belonging to the same, did by inherent Birthright, and lawful and undoubted Succession, descend and come to his most Excellent Majesty, being lineally, lawfully, and justly next and sole Heir of the Blood Royal of this Realm; and thereunto they do most humbly and faithfully submit and oblige themselves, their Heirs and Posterities for ever, until the last drop of their Blood be spent." I have been the more particular in the Recital of this Act, because it stands not only as a perpetual Declaration of the sense of the Representatives of the whole Nation for an Hereditary Succession of the Crown, without any Vacancy or Election, but also because it contains their solemn Engagements for themselves and their Posterities for ever to King *James* and his Issue, and consequently to his right Heirs for ever. So that nothing can be more directly contrary than this Act to the late Proceedings of the Convention, first in declaring the Throne vacant, and then placing the Prince and Princess of *Orange* therein.

Chap. 22.

F. I will not deny but that King *Henry* the VIIIth, and *Edward* the VIth, both succeeded by Right of Inheritance; but whether the former claimed it as Heir to his Mother or his Father, is much to be doubted, since being Heir to both of them, he never declared by what Title he held the Crown: but as for his two Daughters, Queen *Mary* and Queen *Elizabeth*, it is certain their best Titles were from these Acts of Parliament: for as to Queen *Mary*, it is plain, that at her coming to the Crown, she could not be looked upon as Heir by Right of Blood, because by the Statute of the 25th of *Henry* the VIIIth, his Marriage with Queen *Catherine* her Mother was declared unlawful, and the Crown settled upon the King, and the Heirs of his Body lawfully begotten on Queen *Anne Bullen*: and besides all this, she was but Sister by the half Blood to King *Edward* the VIth, and so could not inherit as Heir to him. And tho in the first Year of her Reign, the Parliament ('tis true) took off her Illegitimation, and repeal'd the Acts of the 25th and 28th of *Henry* the VIIIth, whereby she was declared illegitimate; yet in this, the Parliament seems rather to provide for the Honour of her Descent, than (as you would have it) to declare her Succession to be Inheritance by Right of Blood; because the Statute of the 35th of *Henry* the VIIIth, whereby the Crown was settled upon Prince *Edward* and the Heirs of his Body, the remainder upon the Ladys *Mary* and *Elizabeth*, and whereby the King had also power given him of disposing the Crown by Letters Patents, or by Will, was not at all repealed: and for which a memorable

able Reason is given in both these Acts, "lest if such Heirs should fail, and "no provision made in the King's Life who should rule and govern this Realm "for lack of such Heirs, that then this Realm should be destitute of a law- "ful Governour." Whereby it seems plain, that the Parliament then e- steemed no Heirs to have a Right by Law farther than had been declared by these Statutes.

So likewise for Queen *Elizabeth*, her Title was more apparently by Act of Parliament: and that she looked upon her self sufficient to have succeeded by virtue of the Limitation of the Statute of the 35th of *Henry* the VIIIth, last mention'd, appears in that she never procured her Mother's Marriage to be declared good, and consequently her own Illegitimation to be taken off. So that take it which way you will, it is certain that either Queen *Mary's* or Queen *Elizabeth's* Title must have been only by Act of Parliament, since she was born whilst Queen *Catherine*, King *Henry's* first Wife, was living: and therefore when the Parliament you mention, in the first Year of Queen *Elizabeth*, declared, "That she was rightly, lawfully, and lineally descended, and come of "the Blood Royal of this Realm;" these words can only be understood of such a lineal and lawful Descent as is here declared to be so by virtue of this, as well as the former Statute, and not according to any Hereditary Descent at Common Law, since it is very well known, that as long as the Pope's Dispensation for King *Henry's* Marriage with the Princess *Catherine*, his Brother's Wife, was allowed for good, as it was till the latter end of *Henry* the VIIth's, and all the first twenty five Years of *Henry* the VIIIth's Reign, the Princess *Mary* was looked upon as the only presumptive Heiress of the Crown. This I tell you, not to invalidate Queen *Elizabeth's* Title, but to let you see that Acts of Parliament, if they declare that which is apparently false in matter of Law or Fact, are not to be credited, unless you will give them more power than God himself, who cannot (as all Divines agree) make that to have been done which was never done, or that not to have been done, which hath once come to pass.

I come now, in the last place, to examine the Act of Recognition of King *James* the First's Title to the Crown, which I will not deny to have been by Right of Blood, since none of the Descendants of King *Henry* the VIIth could have any Title before him: for tho it is true it was otherwise ordained by King *Henry* the VIIIth's Will, yet that (as you your self show) was not only cancelled in Queen *Mary's* time, but was also void in it self. For whereas by the Statute of the 35th of *Henry* the VIIIth, there was a power given him to dispose of the Crown, either by his Letters Patents, or else by his last Will signed with his Hand; yet was this Power never legally executed: for those that have argued against this Will, have told us, that he never signed it in his life-time, but that a stamp of his Name was put thereunto after his De- cease; as manifestly appeared by open Declaration made in Parliament of this matter by the Lord *Paget* and others, that King *Henry* did never sign it with his own hand; as was also proved by the Pardon obtain'd for one *William Clerke*, for putting the Stamp upon the said Will after the King was departed. So that tho I grant that King *James* had a very good Title to the Crown of *Eng- land* by Inheritance, yet whether it was from King *Henry* the VIIth alone, or from Queen *Elizabeth* his Wife, is not there declared; only that he was law- fully descended of Lady *Margaret*, eldest Daughter to King *Henry* the VIIth, and Queen *Elizabeth* his Wife, eldest Daughter of King *Edward* the IVth; and therefore, "that they are bound both by the Laws of God and Man to re- "cognize his Majesty as sole Heir of the Blood Royal of this Realm." All which is so far true, if by the Laws of God, and Man's Law, you will thereby understand such Laws as God impowers the King and Parliament to make; for otherwise, there is no more heed to be taken of this Declaration, than that which was made before to *Richard* the Third, which also declared him to have a good Title to the Crown by the Laws of God and Nature, and the Laws and Customs of this Realm. So that I see nothing in all this Act of Recognition that at all contradicts my Notion, that King *James's* Title is wholly derived from the Act of Settlement made on King *Henry* the VIIth, from whom he was lineally descended; therefore tho his Pedegree be also derived from Queen *Elizabeth*, eldest Daughter to King *Edward* the IVth, yet this was only ex abun- danti,

Phil. Lethbr-
ton's Letter to
Sir Will. Cecil.
Appendix to
the 2d Vol. of
the History of
the Reforma-
tion, fol. 269.

danti, to show that he had every way a Title to the Crown; and if she her self had any Title, it was wholly by virtue of those Acts of Parliament of the 39th of *Henry* the VIth, and 1st of *Edward* the IVth, which vested the Crown in *Richard* Duke of *York*, and King *Edward* the IVth, his Son, and which last Act first declared that the three *Henrys* of the House of *Lancaster* were only Kings in Deed, and not of Right; for before that time I defy you to show me in all our Histories or Law-Books any such Distinction. In all foregoing times, he that was solemnly anointed and crowned King in Deed, was also looked upon so to be in point of Right: and therefore let those Statutes you so much insist upon, talk ever so much of any King's being so, by any fundamental Hereditary Right, precedent to, and independent from the Power of the two Houses of Parliament; I am very well satisfied that such a Declaration must be void in it self, since I have already proved that there was no such Law of Succession ever settled by any general Custom, or Common Law, and it hath been near as often broken as observed: and as for any positive or Statute-Law, enacting any Hereditary Right of Succession, you do not so much as pretend to show it. So that I think I have sufficiently proved the three Propositions I laid down, viz. That ever since the time of *Edward* the First, tho the Crown has been claimed by Right of Blood, yet has it not been very often enjoyed by Princes who had no just pretence to that Title. Secondly, That the two Houses of Parliament have often, notwithstanding that Claim, placed, or at least fixed the Crown upon the Heads of those Princes, who they very well knew could have no Hereditary Right to it. Thirdly, That such Princes have been always taken for Lawful Kings, all their Laws standing good at this day, without any Confirmation by their Successors. So that all the modern Acts of Parliament for entailing the Crown, being made and ordained by the Council and Assent of the Lords and Commons, are so many plain Declarations, and evident Recognitions, what the fundamental Constitution of the *English* Government was in that grand Point.

M. I did not think that you, who were so great an Admirer of the two Houses of Parliament, should now be so much against their Power, in joining with the King to declare what the true Right of Succession to the Crown is, and hath ever been from time beyond memory; but I see Acts or Declarations of Parliament signify nothing with you if they are against your Hypothesis, or else you would never go about thus to expose those Acts of Parliament of King *Edward* the IVth, and King *James* the First, whereby they are declared both by the Laws of God and Man undoubted Heirs of the Crown. And the last Act I cited, viz. that of King *James* the First, doth sufficiently confute your Notion of a Vacancy of the Throne; where it is expressly declared, "That immediately upon the Decease of Queen *Elizabeth*, the Crown of *England*, with all the Dominions belonging to the same, did by inherent Birth-right, and lawful and undoubted Succession, descend and come to his Majesty King *James*." So that if there then were no Vacancy of the Throne, I cannot see how there could be any such thing now, the next Heir to the Crown (be he who they will) being certainly not so far removed from King *James* I. as himself was from King *Henry* VII. under whom he claimed.

F. I must still confess my self to have a great Veneration for the solemn Declarations of King and Parliament, made by any Statute; yet not so as to idolize them, or to look upon all their Declarations as infallible. I grant indeed, that whosoever is by them declared and recognized for King or Queen of *England*, is to be acknowledged and obeyed as such by all the Subjects of this Kingdom, without farther questioning his Title. But if not content with this, they will also take upon them to declare that such Kings or Queens have an undoubted Hereditary Right, by the Laws of God and Nature, when I plainly find from the Holy Scriptures, as well as the History of matter of Fact, and the Knowledge of our Laws, that they have no other Title than what the Laws of the Land have conferred upon them; they must excuse me, if I do not acquiesce in such Declaration. Nay, you your self cannot deny but that it was gross Flattery in the two Houses of Parliament to declare, that *Richard* the Third (for example) had a true and undoubted Right to the Crown, by the Laws of God and Nature, and also by the Laws and Customs of this Realm, when you know he was a notorious Usurper upon the Rights of his Brother

Brother, King *Edward's* Children. Now how can I be assured that the like Declaration made to King *James* the First, was not likewise a piece of Courtship of the Representative of the Kingdom to this King, then newly settled in his Throne? since we find the People of this Nation, when they are in a kind fit, never think they can say or do too much for their Princes: And therefore I must freely tell you, that it is not the bare Declaration of a Parliament that this or that has been always the Law or Custom of this Realm, when we can find from History that it has never been so held for above four hundred Years at least, and therefore not beyond the Memory of Man (as you suppose) since that must be before the Reign of *Richard* the First, as I have already proved to you at our Eighth Meeting.

But to answer your Objection against the Vacancy of the Throne, I do freely grant, that as often as the Crown descends by lineal Succession, there can be no Vacancy of the Throne, as it did in the Case of King *James* the First; yet doth it not therefore follow, that there can never be any such Vacancy in any Case whatsoever, since certainly it may so happen, that all the Heirs Male of the Blood-Royal may fail, as it happen'd in the Case of *Scotland*, when *John Balliol* and *Robert Bruce* contended for the Crown, which not being to be decided by the Estates of the Kingdom, they were forced to refer it to our King *Edward* the First: and as also happen'd in *France*, when *Philip of Valois*, and our *Edward* the Third, both claimed the Crown, which was decided by a great Assembly of the States of *France* in the favour of the former, who claimed as Heir of the Male Line, against King *Edward*, who was descended by a Woman. And if King *James's* Abdication or Forfeiture (call it which you will) is good, pray give me a sufficient reason why the Convention of the Estates of *England* should not have as much Authority as those of *France* or *Scotland*; this being as much or more a limited Kingdom, than either of the other ever were.

M. I do not deny that, but pray shew me any sufficient Reason why the Convention should now vote a Vacancy of the Throne, since there was certainly an Heir apparent not long since in *England*, and I hope is now safe in *France*, who ought to fill it; or at least there should have been some sufficient Cause alledged against him, to prove that he was not the true Son either of the King or Queen; and till this was done, they could not with any Right or good Conscience place any other Relation of his in the Throne, since every Person ought to be esteemed the Son of that Father and Mother that publicly own'd him for such: for it is a Maxim in our, as well as your Law, *Filiatio non potest probari*.

F. How this could be performed without first declaring the Throne vacant, I cannot apprehend; for you your self must grant, that there have been great Doubts and Suspicions of the Reality of this Prince of *Wales*: and therefore that being one great reason of the Prince of *Orange's* coming over, the Truth of this Child, whether he was really born of the Body of the Queen, is first to be examined and determined, before he can be declared King of *England* in the room of his supposed Father, whom we will also suppose civilly (tho not naturally) dead. And till this be done (unless you would have had him been declared King without ever examining the Truth of the matter) the Throne must have continued vacant till it could be decided, whether he, or his half Sister the Princess of *Orange*, were to fill it: and if so, while the Convention remain'd in this suspence, they could do no other than vote the Throne vacant, till they were sufficiently satisfied who had the best Right to it.

But to answer your Argument, that unless something could have been presently alledged against this Infant, to have proved him not to have been born of the Body of the Queen, he ought to have been declared King: The Maxim you mention may be well allowed in the case of common Inheritances, but not in that of Crowns; for in those we have read, that common and violent Presumptions have been looked upon as sufficient Proofs to set aside a supposed Heir of the Crown: as for example, something above two hundred Years since, *Henry* King of *Castile*, called the Impotent (because he was not able to get his Queen or any other Woman with Child) did out of hatred to his Sister *Isabella*, permit a Favourite of his to lie with his Queen, and get her with Child: she was brought to bed of a Daughter, but the Estates of the Kingdom would by no means admit her for Legitimate, because the Queen had before declared her Husband to be impotent; and therefore they did not only protest against her

Vid. Mariana's History of Spain.

her Legitimacy in the King's life-time, in an Assembly of the Estates, but also as soon as he died, they set this pretended Princess quite aside, and declared the Sister of the late King, Queen of *Castile*, who was married to *Ferdinand* King of *Aragon*. Now though I will not say, that either the Suspicions or Proofs against the present Prince of *Wales* are as pregnant as those against that Princess, yet certainly they were sufficient to debar him from being placed in the Throne, till such time as it shall be made apparent that he is really Son to the Queen.

M. If the Convention had gone this way to work, I grant there might have been some colour for what they have done: but then they ought, before they had placed any body else in the Throne, to have first examined the Truth of the Queen's being with Child, and her being truly delivered of this Prince, before ever they had declared the Prince and Princess of *Orange* King and Queen; and till this had been done, certainly the Throne should have still continued vacant: therefore I doubt your Convention have made more haste than good speed in this matter, which certainly required much more Deliberation.

F. Come, I will for once admit that they ought, in the first place, to have examined your Prince's Title, but this is still to be understood, as far as it was possible for them to do it, as it ought: now pray tell me how this could be done, when the Infant was not only carried away into a foreign Kingdom, but also the Midwife, the Nurse, and several other of the Queen's near Servants and Attendants went away along with him? who if they had been here, to have been cross-examined, might have declared the Imposture (if it be one.)

M. But pray, Sir, are there not Protestant Ladies enough left behind, who have already deposed before the Council (as appears by their Depositions published by the King's express Command, and enrolled in Chancery, *in perpetuam Rei memoriam*) not only that her Majesty was with Child, but that also she was really delivered of this Prince? so that the Prince of *Orange* and the Convention ought to have in the first place summoned those Witnesses you mention to be now in *France*, to have appeared before them, and if they had not come, then to have proceeded as the matter had required.

F. You must then grant that the Protestant Witnesses alone, who are now in *England*, were not sufficient; for if they should have deposed that this Child had been an Impostor, I suppose you would not have rested satisfied that they had spoke nothing but the Truth, since the Witnesses now in *France* (who best know the matter of Fact) might have sworn the contrary: but as for sending any Summons for them into *France*, it was altogether in vain, and that which the Convention were not at all obliged to do, because neither King *James* nor his Queen did ever own the Power of the Convention to hear or determine this Affair, and therefore would not have let the Witnesses come over. For after the Throne was declared vacant, the King must, by sending those Witnesses, have tacitly owned the Authority of the Convention, in declaring himself to have abdicated the Throne, as also that they might place his Son therein: so that any such Summons would certainly have been only rejected with Scorn, and we should have gained nothing but the loss of so much time, and hindred our present Settlement and Defence. Nor was the Convention obliged to do it, since the Parliament it self is not bound to take cognizance of any Person or Thing that is not within the Kingdom of *England*, or the Territories belonging to it; and therefore it was not their business to enquire (unless it had been brought before them) what was become of this Infant, whether he was legitimate or not, or whether he was alive, or else had been cast away at Sea, or taken by Pirates; any of which might very well have been. And therefore indeed this business could never have been decided, unless the Infant himself were actually present, and sufficient proof made, not only that this was the same Child that was born of the Queen, but which was also carried away into *France*; all which could never have been examined as it ought, without the Child's personal Presence here, which I suppose you will grant that King *James* and his Queen would never admit of, as things now stand. Therefore since a thorow Examination into this business was impossible to have been performed, the Convention have done no more than what can be justified, in first declaring the Throne vacant, and then who should fill it.

M. Well, but admit the Case were so as you have put it, the Kingdom ought however to have remain'd without a King, till the Succession had been duly settled; since according to the Act of Recognition to King *James I.* "The Nation did not only oblige themselves, but their Posterity (that is, we that are now alive) to that King and his Right Heirs." And therefore till this Prince's Right had been determin'd, either the Convention should have govern'd, or else they ought to have made the Prince of *Orange* only Governour or Regent of the Kingdom, and not to have plac'd him and his Princess on the Throne, till the young Prince had died, or else had been prov'd to be an Impostor.

F. I doubt not but I can shew you not only the Unreasonableness, but also the unpracticableness of this Supposition. First, Its Unreasonableness, since you are very much mistaken to alledge that the whole Nation, by that Act of Recognition to King *James*, oblig'd themselves, and their Posterities, to him and his right Heirs by Blood. 'Tis true they there tell him, "That they made that Recognition as the first Fruits of their Loyalty and Faith to him, and his Royal Progeny and Posterity for ever: And also when they have acknowledged him to be justly and lawfully next and sole Heir of the Blood Royal of this Realm, and that they thereunto submit and oblige themselves, their Heirs and Posterities for ever: &c." there is no more meant or express'd in all this, than that the whole Nation did by their Representatives in Parliament oblige themselves and their Children to King *James* and his Posterity for ever. And I think that this part of the Recognition is sufficiently perform'd, by placing two of his Great Grandchildren in the Throne: for as to the words rightful or lawful Heirs, they are not to be found in all this Statute.

But as for your Notion of a Regency, it is plain it could signify nothing, either for our present Security, or future Settlement; not to the former, since this Regent (be he whom he would) must have govern'd in the Right of some body or other, since I never read of a Regency in *England*, during a Vacancy of the Throne; therefore I will at present admit that the Vote for King *James's* Abdication had never been made, only that the Prince of *Orange* had been declar'd Regent of the Kingdom, till such time as King *James* would have given the Nation sufficient Satisfaction of his reforming all past Miscarriages, and that his future Government should be according to Law. Now I would very fain know how it can be justify'd, according to your Notion of the King's absolute irresistible Power, to place a Regent over the Kingdom to govern in his stead, whether he will or not, when it is certain he is neither a Minor, an Idiot, nor a Lunatick: so that then he must have return'd again to the Government whenever he had pleas'd, or else the Convention must have been Judges whether the Security or Satisfaction he offer'd was sufficiently satisfactory or not; for if he himself was to be sole Judge in this Case, I suppose you will grant this Regency would quickly have been at an end. But on the other side, if this Right of judging had been left in the Convention, whether the King's Proposals were satisfactory or not, they might also have voted them not to be so; and till this was done, they might very well have justify'd their keeping him out of the Kingdom by Force. Now how that could have consisted with your Doctrine of the King's irresistible Power, I desire you would satisfy me if you can. So that by this Regency, the King must either have been depriv'd of his whole Power, or he must not; if the former, that would have been as bad as deposing him from being King, and had left him no more than the bare Title: and whether this had not been a great deal worse (as more hypocritical) than the Convention's declaring him to have abdicated the Government, I leave it to any indifferent Person to judge.

But if you will suppose that this Regent must have govern'd in the name of your Prince of *Wales*, as being declar'd King, that would have been to have granted his Title to be good without hearing of it, and had been indeed to have given up the main Point in dispute.

M. I see you would fain find out any shifts for this pretended Vacancy, and placing those in the Throne to whom it doth not belong; yet tho I grant that the word *Right Heirs* is not expressly recited in this Act of Recognition to King *James I.* yet for all that, it is implied: for the Oath of Allegiance is enacted by *Elizabeth I.* to be taken to the Queen, her Heirs, and lawful Successors; and by the Oath of Supremacy (enacted in the 14th of King *James*) we

are likewise oblig'd to swear, that we will bear true Allegiance to his Majesty, his Heirs, and Successors. Now who these Heirs are, this very Act of Recognition doth sufficiently declare, *viz.* the next Heir by descent of Blood; for as King *James* is hereby acknowledg'd to be Heir by inherent Birthright, so when they oblige themselves, and their Posterities to King *James*, and his Progeny, it is to be understood (by parity of Reason) that they oblige themselves and the Nation, for all future Generations, to him and his Issue in that sense; as that their Allegiance should be only due to him, or her, who should be lawful Heir to their Father, Brother, or Uncle, according to those Rules of Succession, that had been commonly receiv'd for above four hundred Years last past: that is to say, the eldest Son, Brother, or Daughter, being still to be prefer'd before the younger, and Sons before Daughters, and the same Rule must also hold for their Descendants; since upon this ground it was, that the Title of the House of *York* was prefer'd by Parliament before that of *Lancaster*; and the Title of the King of *Scots*, who was descended from the eldest Sister, before that of the House of *Suffolk*, who came from the younger. And this being never alter'd by any subsequent Statute (or if it had, I think it would not have been good) the Convention ought either to have declar'd the Prince of *Wales* King immediately, or at least to have continu'd the Throne vacant, let the Difficulties or Inconveniences that you suppose might have follow'd, be ever so great: and therefore it was their Duty to have sought out King *James* wherever he had been, and to have desir'd him to have sent over the Prince, together with the Witnesses that went away with him. And till this had been absolutely refus'd, or else that upon a fair hearing this Prince had been prov'd an Impostor; I say till one of these had been done, the Throne ought still to have continu'd vacant (if it were so at all) nor till this had been clear'd could they have justified the placing any body else upon the Throne, tho ever so nearly related to the King; whom I will suppose for Discourse-sake, to have really abdicated the Kingdom.

F. I will not deny that the legal and common course of Succession ought to be inviolately observ'd, according to the Rules you have now laid down, whenever it may consist with the publick good and safety of the Kingdom; and yet for all that I cannot believe, that the King himself, much less any other, that only pretends as next Heir to him, can have such an absolute Right to the Kingdom, as that no Considerations whatsoever can make them lose or forfeit their Right thereunto: therefore I look upon the Government of a Kingdom not to be like that Interest which a private Man hath in an Estate, which is his Right let him be what he will, or let him manage it how he will. Whereas in the Right to a Kingdom, I take it to be a true Maxim, That the Representatives of a Nation (as the Convention was) ought to have more regard to the Happiness and Safety of the whole People, or Commonwealth, than to the Dignity or Authority of any particular Person whomsoever, or howsoever nearly related to the Crown; when it is evident the advancement of such a Person to the Throne, will prove destructive to our Religion, Civil Liberties and Properties.

Now give me leave to apply what I have said to the Point in question: Let us therefore at present suppose, that your Prince of *Wales* is true and lawful Son to King *James* and Queen *Mary*; and let me also farther suppose, that in his late Passage over Sea, he had been taken by the Pirates of *Algiers*, or *Tunis*, and by them carried to one of those places, and bred up in the *Mahometan* Religion; and after he had been circumcised, and fully grounded in that abominable Superstition, the Grand Signior, together with the Kings of *Algiers* and *Tunis*, should send this Nation word, that if they would not admit him quietly for their King, and allow all those Priests he should bring with him a free Exercise of their Religion in *England*, they would then make War upon this Nation with all the Forces they could raise. I ask you what we ought to do in this Case, whether we should receive him for our King, or keep him out?

M. I must confess it is a nice Question; and since it is a thing that never did yet, nor I hope ever will come to pass, I think I may freely answer you, That supposing this Prince could be prov'd to be the very same who was carried away so many Years ago, we ought, notwithstanding his false Belief, to receive him; especially

especially if he would solemnly swear, only to worship God in private after his own way; and that he would swear not to violate our Religion, or invade our Liberties and Properties: and this being done, I think we ought then to admit him for our lawful Sovereign; since, as you your self have already acknowledged at our third Meeting, the supreme Powers are not to be resisted, because they are of a different Religion from that of the People or Nation they govern.

F. Very well: But let me tell you, in this you are much more kind to *Mahometan* and Heretical Princes, than the Church of *Rome*, who have decreed, That no Prince ought to be receiv'd as right Heir to a Crown, who is a Pagan, *Turk*, or Heretick; and upon this ground it was, that the States of *France*, during the time of the League, by the Pope's Decree, refus'd to own *Henry* King of *Navarre* for their Sovereign; and also, that the Papists of the Nuncio-Party in *Ireland* during the late Rebellion, refus'd to own the late Duke of *Ormond* for Lord Lieutenant of that Kingdom, because the King was a Protestant.

But pray answer me a Question or two further: Suppose this Prince refus'd to promise these things, or else if he did promise, and swear them; pray tell me how could we be assur'd, that according to the Principles of that Religion he had been bred under, and those Arbitrary Notions he had learn'd concerning the absolute Power of Kings in *Barbary*, and which he would believe due to himself, as being as absolute a Monarch as any of them: I say, how such a Prince ever could be trusted? Since if he had the whole Power of the Militia in his hands, he might bring in what number of *Turkish* or *Moorish* Guards he should think fit, who might easily set up that Religion and Government too, in this Nation; since, according to your Principles of Passive Obedience and Non-resistance, no Man ought to lift up so much as a Finger against him, tho he went about to make us all *Turks* and Slaves.

M. Well, supposing all this, as long as it is his Right he ought to have it, let the Consequence be what it will.

F. You have said enough, I desire no more; but I hope every true Protestant and *Englishman* will be of another mind if ever such a case should happen. But indeed it appears very strange to me, that a natural Disability, such as Idiocy or Lunacy, should be esteem'd sufficient in all Kingdoms to debar the next Heir from the Government, and yet that a Moral or Religious Disability should not have the same effect: and tho I grant that a King ought not to be rebelled against, or resisted, merely because he is of a different Religion from that of his Subjects, for I was never for resisting King *James* merely upon that score; yet it is another thing when a Prince is not actually possessed of the Throne, but is to be admitted to it upon such Conditions as may appear safe for the Religion and Civil Constitution of a Kingdom. In this Case, if a Prince be certainly infected with such pernicious Principles, either in relation to Religion or Civil Government, it is much otherwise: as for example, That no Faith is to be kept with Hereticks; That his own Religion is to be propagated by Arms, Blood, or Persecution; That no Government can be safe for the Prince, or in which he can appear Great or Glorious, but as an absolute Monarch: let such a Prince be either a Christian or a Mahometan, I think it would be a certain Ruin to a Kingdom to be oblig'd to receive such a Prince, when they were morally sure, that he would not only subvert their Religion, but destroy the very Professors of it; and not only those, but alter the Civil Constitution too, by turning it from a limited Kingdom, into an absolute despotick Tyranny.

To conclude, I shall only desire you to consider, into what a Country your Prince of *Wales* is carry'd, and what Instructions he is like to have, and what Principles he will receive from them: and then pray tell me, if he continues there till he is a Man, what difference there will be between this young Prince bred up in such a Religion, and such Principles, and the same, if he had been carried away by Pirates to *Algiers*, as I at first suppos'd?

M. This is a very invidious Comparison; for tho I do not approve of the Roman Catholick Religion, yet sure there is a great deal of difference between that which professes all the Articles of our Creed, and in which we of our Church own Salvation may be obtained, and the *Mahometan* Superstition, which

Vid. Fortescue
de Laud. Leg.
Ang. in proem.

denies that fundamental Article of our Creed, *viz.* That Jesus Christ is the Son of God. And as for Civil or Political Principles, I hope the King his Father will take care to have him instructed by some of those *English* Noblemen or Gentlemen who are now with him, in the Customs and Constitutions of the *English* Government, and wherein it differs from the *French*; as we read Chancellor Fortescue did Prince Henry, Son to Henry V. and I hope he will come over again to practise them in his own Country before he comes to be infected with the Arbitrary Principles of the *French* Government. But as for those of not keeping Faith with Hereticks, and propagating his Religion by Persecution; I doubt not but the King his Father will take care not to commit his Education to any of those who are infected with such Principles: and I am the more inclin'd to believe it, because it is very well known that his Majesty's Tenderneſs and Moderation in matters of Religion, and not persecuting any body for the Belief or bare Profession of it, as it was the greatest Cause of his late Declaration of Indulgence, so it was the main Original of all his late Misfortunes. Nor can I see any reason why a King by being a Roman Catholick, must necessarily be a Tyrant and a Persecutor, since you cannot deny but that we have had many good and just Kings of that Religion, and it is from those Princes that professed it that we derive our *Magna Charta*, and most of the Privileges we now enjoy.

F. Tho I would not be thought to affirm, that the Romish Religion is every way worse than the *Mahometan*; yet this much I may safely affirm, that there is no Doctrine in all that Superstition, so absurd and contrary to Sense and Reason, as that of Transubstantiation, held by the Church of *Rome*, in which the far greatest part are certainly Idolaters, which can never be objected against the *Turks*: and therefore tho I will not deny but that a Man may be sav'd in the Communion of the Romish Church, yet it is not for being a Papist, but only as far as he practises Christ's Precepts, and trusts in his Merits, that he can ever obtain that favour from God.

But as for those evil Principles both in Religion and Civil Government, which you cannot deny but are now commonly believed and practised in *France*, and which you hope King James will take care that the Prince his Son shall be bred to avoid; I wish it may prove as you say: but if you will consider the Men that are like to be his Tutors and Instructors in matters of Religion, *viz.* his Father's and Mother's Confessors the Jesuits; and for Civil Government, those Popish Lords and Gentlemen of notorious Arbitrary Principles and Practices, who are gone over to King James; you will have small reason to believe, that there is ever a Fortescue now to be found among the *Englishmen* in *France*, or who is likely to instil into him those true *English* Principles you mention.

And tho I do not affirm, that every Popish Prince must needs be a Persecutor, yet since that wholly depends upon those Priests that have the management of their Consciences, shew me a Prince in *Europe* who has a Jesuit for his Confessor, and tell me, if he hath not deserv'd that Character.

But tho I am so much of your Opinion, that King James owes the greatest part of his Misfortunes to his Declaration for Liberty of Conscience; yet was it not so much to the thing it self, as to his arbitrary manner of doing it, by assuming a dispensing Power contrary to Law: and you may be very well assur'd by the little opposition which the late Acts met with for taking off the Penalties against Conventicles, and not coming to Church, in respect of all Dissenters, except the Papists, that King James might have as easily obtain'd a like Act to pass in respect of those also, as to the free Profession of their Religion, and having Mass in their Houses; which is more than the Papists will allow the Protestants in any Country in *Europe*. And therefore I must beg your pardon if I still find great reason to doubt whether King James's Tenderneſs towards those that differ'd from him in matters of Religion, and the Indulgence he gave them, were purely out of Consideration of tender Consciences, and not rather thereby to destroy the Church of *England* establish'd by Law; since the Dispute began between King James and his Parliament, was not about Liberty of Conscience, but those Offices and Commands which the King was resolv'd to bestow upon the Papists, whether the Parliament would or not. And certainly there is a great deal of difference between a Liberty for a Man to enjoy the free Profession of his own Religion, and the Power and Benefit of
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having all the chief Employments of Honour and Profit in the Commonwealth. But that the Indulgence of Popish Princes towards those that dissent from them in matters of Religion, may not always proceed from pure Tenderness and Compassion, appears from a Manuscript Treatise of F. Parsons, (that great Jesuit in Queen Elizabeth's time) which I have been told was found in King James's Closet after his Departure. This (if you can see it) will shew you, that the subtle Jesuit doth there direct his Popish Successor, in order to the more quiet introducing the Roman-Catholick Religion, to grant a general Toleration of all Religions, out of a like design. Thus did Julian the Apostate long ago tolerate all the Sects and Heresies in the Christian Religion, because he thereby hoped utterly to confound and destroy it.

But as to what you alledge concerning *Magna Charta's* being granted by Popish Princes, and that there has been many good Kings of that Persuasion; as I will not deny either the one or the other, so I desire you to remember with what struggling and great difficulties this Charter was at first obtain'd, and afterwards preserv'd, tho it was no more than a Declaration of most of those ancient Rights and Liberties which the Nation had always enjoy'd. And you may also remember that they were Popish Princes, who more than once obtain'd the Pope's Dispensation to be discharged from those solemn Oaths they had taken to observe those Charters; and tho there have been divers good Princes before the Reformation, yet even the very best of them made the severest Laws against Protestants, and were the most cruel in their Persecutions; witness King Henry IV. Henry V. and Queen Mary. And indeed, it is dangerous to rely upon the Faith of a Prince, who looks upon it as a piece of Merit to destroy all Religions but his own; and when he finds it cannot be done by Law, will not stick to use any arbitrary means to bring it about. To conclude, pray consider whether the strict observing or violation of *Magna Charta* and his Coronation-Oath, hath been the cause of King James's Abdication. Pardon this long Discourse, which your Vindication of the Opinion and Practices of Popish Princes hath drawn from me.

M. Pray, Sir, let us quit these invidious Subjects, which can do no good, since Princes must be own'd and submitted to, let their Principles and Practices be ever so Tyrannical; and let us return again to the matter in hand. I will therefore at present suppose the Prince of Wales to have been either dead, or justly laid aside. Now make it out to me how you can justify the placing the Prince and Princess of Orange in the Throne, when the Crown is really her Right after the Prince of Wales, and not her Husband's; as also the putting the Government solely into his hands: since this can no ways agree with the Act of Recognition to King James I. which you your self cannot deny but ought to be observ'd, when it may be done without any apparent hazard or prejudice to the Protestant Religion, and the Constitution of our Government; which I think might have been as well, if not better secur'd, by letting it have gone in the right Line, than by placing the Crown upon the Head of a Prince, who, of the Blood-Royal by his Mother, yet being a Foreigner, is a mere Stranger to our Government and Laws, and has been bred up in Calvinistical Principles; and upon that score is not like to have any good Intentions towards the Government and Ceremonies of the Church of England, as appears by his late agreeing to abolish Episcopacy in Scotland, upon his accepting that Crown from the Presbyterian Convention.

F. If these be all the Objections you have to make against placing King William and Queen Mary on the Throne, I hope they will not be of any great moment to your self, or any other considerate Man: for if upon the Abdication of King James, and the impossibility of determining your Prince of Wales's Title (if it be one) a Regency was impracticable and unsafe for the Nation at that Conjunction of time, when we wanted a King to hold a Parliament, as well to raise Money to defend us against the Power of France, as also to make new Laws for the Ease and Reformation of the Kingdom; all which a Regent's acting without Royal Authority could never do, by the Constitution of this Kingdom: then there was a necessity of placing some body in the Throne, for the common Good and Safety of the whole Commonwealth; and I think you your self cannot but acknowledge, that the Princess of Orange had an Hereditary Right to the Crown; and if her Highness had, the Prince her Husband also ought to govern

govern the Kingdom in her Right during her Life. And those who deny King *Henry VII.* to be Lawful King before his Marriage with the Princess *Elizabeth*, will yet grant he was so in her Right after his Marriage: and this has not been only the Custom in *England*, but also in other Kingdoms of *Europe*, as I can give you several Instances. For upon this ground it was that *Ferdinand* King of *Arragon*, by marrying with *Isabella* Queen of *Castile*, govern'd that Kingdom during his Life: so also *Anthony* Duke of *Bourbon* marrying with *Jane* Queen of *Navarre*, did in her Right administer the Government of that part of it, which was left unconquer'd by the *Spaniards*: and here at home *Philip* Prince of *Spain*, by his Marriage with Queen *Mary*, had certainly in her Right govern'd this Kingdom, and had enjoy'd something more than the bare Title of King, had he not by the Articles of Marriage, confirm'd by Act of Parliament, been expressly debar'd from it.

M. Admit all this to be true, yet this was only the Enjoyment of a bare Matrimonial Crown, and held no longer than during the Lives or Marriage with those Queens you mention. But pray tell me, how can the Convention, according to the antient Constitution of this Kingdom, justify the Settlement of the Crown, not only on King *William* during the Queen's Life, but for his own Life also, to the prejudice not only of his own Issue (if ever he have any by the Princess) but also of the Princess of *Denmark* and her Heirs?

F. I doubt not but to shew you, that this may be easily justify'd by the Constitution of the Kingdom, and former Precedents of what hath been done in the like Cases. First, As to the Constitution, I have already prov'd that upon the Deposition of a King (which is all one with a Forfeiture of the Crown) the Great Council or Parliament have taken upon them to elect or admit either the next Heir by Blood, or some Prince (tho more remote) of the Royal Family, to the Crown. Thus King *Henry IV.* upon the Deposition or Resignation of King *Richard II.* was plac'd in the Throne by the Archbishop of *Canterbury*, after the two Houses had voted and consented he should reign over them; tho I grant that by Right of Blood, *Edmund* Earl of *March* ought to have succeeded to it: but he being then a Child, was pass'd by unmention'd; Duke *Henry* being then powerful, and having deliver'd the Kingdom from the Tyranny and evil Government of *Richard II.* I shall pass by *Richard III.* because I own his Government to have begun by Usurpation, and to have been establish'd by the Murder of his Nephews. But as for *Henry VII.* I have already shew'd you, that the Parliament before his Marriage with the Princess *Elizabeth*, settled the Crown upon him, and the Heirs of his Body, by virtue of which he held it all his Reign: whereas there is no such thing done in the present Case of King *William*, since he hath only the Crown settled upon him during his own Life, with the remainder after his decease, without Issue by the Queen, to her, and not his Right Heirs; and as for such Children as he may have by her, it is agreeable to Reason, that he should hold the Crown by that which we call the Courtesy of *England* during his Life, and not from a King become a Subject to his own Children, in case he should desire to live here after her Majesty's decease, which I hope God will prevent.

M. I confess you have dress'd up a pretty plausible Title for King *William*; but yet all that you have said amounts to no more than this, That because other Kings have been Usurpers, he may be so too: for as to all the Instances you have brought, they have been only from Depositions or manifest Usurpations, both which our Laws have condemn'd as absolutely unlawful; as I have shew'd you hath been declar'd by two Acts of Parliament, against the Title of *Henry IV.* and his Descendants. But since you will not insist upon the Right of *Richard III.* I pass to that Act of *Henry VII.* which, as I told you before, so I must repeat it again, that it was done upon his suppos'd Right by Blood, as Heir to the House of *Lancaster*, and upon that pretence he claim'd the Crown as his Right, in his Speech to the first Parliament he call'd: besides, the Princess *Elizabeth*, the Queen *de Jure*, made no claim to the Crown, and so did tacitly resign it, which seem'd to make him *de Jure* as well as *de Facto* King; and if it were done otherwise, I look upon that whole Act as void in it self, because made by him before his Marriage with that Princess, and whilst he was an Usurper upon her Right. So that certainly it is no Argument that since Parliaments have acted illegally, therefore your Convention may do so too; for it is a known

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Maxim in our Civil Law, à *facto ad Jus non valet consequentia* : therefore whatever they have done toward creating a good Title to King *William* in respect of the Queen his Wife, and his Issue by her, yet this no way excuses the wrong done to the Princess of *Denmark* and her Issue, in case they survive your King.

F. 'Tis very wonderful to me, to see how ingenious some Men are in finding faults with the present Settlement of things, tho ever so much for the best, if not done exactly to suit with their Humour, or Hypothesis, when indeed there can no fault be justly found with it : for you agree that if the Queen hath a Right, King *William* hath so also, during his Life ; and whether the Princess of *Denmark* and her Issue may survive the King, is yet uncertain : but if either she or they should happen to survive his Majesty, yet since she hath made no Claim or Protestation in the Convention, against the King's holding the Crown after the decease of the Queen, I cannot see why this should not pass for a tacit Resignation of her Right, as well as in the case of the Princess *Elizabeth* you but now mention'd.

But admit his present Majesty, according to the late receiv'd Rules of Succession, hath not a Title by Descent; yet according to those Principles I have already laid down, he certainly has a Right to the Crown, from that inherent Power which I suppose doth remain in the Estates of the Kingdom, as Representatives of the whole Nation, to bestow the Crown one very Abdication, or Forfeiture thereof, on such Prince of the Blood Royal, as they shall think best to deserve it : and upon this account I conceive there is none of the Blood, that can stand in competition with his present Majesty for Prudence, Valour, Moderation, and all other Royal Virtues ; and therefore it is not at all to be wonder'd at, if the Convention hath in this Case exercised that Original Power, which the People reserv'd to themselves, at the first Institution of Kingly Government in this Island.

Therefore I cannot but here take occasion to vindicate his present Majesty from those Exceptions you have made against his Country, and Civil as well as Religious Principles. First, As to his Country, 'tis true he is a Foreigner ; yet that can be no Exception against his admission to the Throne, since it was none against his Great Grandfather King *James* : and I doubt not but his Majesty may understand as much, if not more of the *English* Constitution and Government, than his said Grandfather did, when he first came to the Crown.

But as for his Principles in Religion, I cannot see any reason to suspect him more inclinable to the Church-Government of *Holland*, than that of *England*, since he was bred up under a Mother, who was always firm to the Religion and Discipline of our Church ; and ever since he was married to the Princess, he hath always shew'd a very great Respect to its Liturgy and Ceremonies, by his so constant frequenting his Princess's Chappel. So that besides his Majesty's Interest to maintain Episcopacy, as most agreeable to the Monarchy and ancient Constitution of this Kingdom ; it is likewise (if he were able) not in his power to destroy the Church of *England*, since the main Body of the Clergy, Nobility, and Gentry of this Nation is so zealous for its Preservation ; that if he had any such Inclinations, it would not be easy for him to effect it, and he is too wise a Prince to let others persuade him so visibly against his own Interest, and having so late an Example before his Eyes, that it was King *James's* Ruin to attempt it.

As for what you say of *Scotland* ; 'tis true, Presbytery is for the present set up there, but it is uncharitable to impute this to the King's Inclinations : for 'tis notorious, that of them who call themselves Episcopal in that Kingdom, the greater number did either out of prejudice to the Prince's Cause, or in contempt of his Power, refuse to be chosen Members of the Convention ; or else after they were chosen, did so far adhere to King *James's* Interest, as to desert it ; as did my Lord *Dundee*, and many others, and by that means gave the Presbyterian Party an advantage to carry all things as they pleas'd : and this Party finding the King not well settled here, and the *Irish* in *Ireland* in Arms against him, took hold of that opportunity to put the abolishing of Episcopacy into the very Instrument of Government, and to press it upon him at a time when an unavoidable necessity and the obstinacy of too many of the Episcopal Party forc'd him to consent to it. Wherefore this no way shews his Majesty's Inclinations to set up Presbytery even in *Scotland* ; much less doth it prove he
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would set it up here, where the Circumstances are quite different: for here the main Body of the People hate that Government, and will be so far from desiring it, that they will never endure it. So that as to this, your fears of King *William* are as vain, as your hopes of King *James*.

I shall conclude with a few words in answer to your reply against those Examples, wherein I have shewn you that the Crown hath always been under such a Disposition as the two Houses of Parliament shall appoint; to which you have nothing else to object, but that their Admission of *Henry IV.* to the Crown was condemn'd as unlawful by two Acts of Parliament, which I have already answer'd, by showing you that those Acts were obtain'd by *Richard Duke of York*, and *Edward IV.* his Son, by actual Rebellion, and by as great a force upon King *Henry VI.* as ever was used against King *Richard II.* by *Henry IV.* And as for the Statute of the first of *Henry VII.* you have found out a very easy way of answering it; by affirming that it was done whilst he was an Usurper, and before his Marriage, or that he had any right to be King. But by this way of arguing, no Act he ever passed would be good, since it is certain he did never take upon him to govern in right of his Queen, as all those that have writ his Life do acknowledge; and therefore if the Parliament would then settle the Crown upon him and his right Heirs, without any respect to his Queen, or her Issue or Sisters, in case she should die childless, I cannot see why the Convention may not as well now settle the Crown upon King *William* and Queen *Mary* and their Issue, with remainder to himself for Life: especially since he hath also another Title of his own to confirm it, viz. that of a Conqueror over King *James*, and our Deliverer from his Arbitrary Government.

M. I shall not go about to derogate from King *William's* personal Virtues, which you so highly extol; only I wish I may not prove too true a Prophet, since that is not the main question between us. I shall only take upon me to answer in the first place what you have urged on the behalf of King *William's* pretence to the Crown as a Conqueror over King *James*, and Deliverer of the Nation; for whatsoever he may pretend to in respect of the latter, I am sure he cannot justly pretend to the former; since sure he can never have any right by Conquest, who expressly sets forth in his first Declaration, that he only came to obtain a Free Parliament, and to redress our Grievances. Much less can he be properly call'd a Conqueror, who never overcame his Enemy in any pitch'd Battel, but by false Stories made the King's Army desert him; and then, when this was done, having forc'd the King to leave the Kingdom for fear, he has in the day of his Power by these means obtain'd the Crown: and as for a Deliverer, you must pardon me, if I cannot think him so, since I am not yet satisfied that the worst of King *James's* Oppressions ever deserved that the Prince of *Orange* should take the pains to come over to redress them.

And therefore your parallel between your King's Title, and that of *Henry IV.* and *Henry VII.* doth not at all agree, since both of them claim'd not so much by Conquest, or force of Arms, as by a pretended right of Inheritance, as you may see by both their Claims. And as for *Henry IV.* 'tis plain, he look'd upon his Title by descent of Blood (having been allow'd in Parliament) to be so good, that for the first seven Years of his Reign, he never thought it worth while to pass an Act for the Settlement of the Crown upon himself, and his Issue: but for *Richard III.* and *Henry VII.* they were so far from owning their Titles to any Act or Declaration of Parliament, that they first clap'd the Crown upon their own Heads, and after they had done it, they immediately call'd their Parliaments; which tho they recogniz'd their Titles, yet did not make them Kings, but found them so: whereas the Convention has by their sole Authority, made the Prince of *Orange*, and the Princess, King and Queen of *England*, to the prejudice of the right Heirs of the Crown.

F. I doubt not, but what I have already said, may very well be defended; notwithstanding the utmost you have now argued against it. In the first place, as to what you say against King *William's* Title, as a Conqueror over King *James*, it is very trivial: for tho it is true, the Prince declar'd before he came over, that his coming was for no other end but to obtain a Free Parliament, redress Grievances, and to remove evil Counsellors from King *James*; yet that is still to be understood, that the King would agree to those reasonable demands the Prince then made: for if by his own obstinacy he would bring things to
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that pass, as that instead of redressing those Violations he had made upon our fundamental Laws, he raised an Army to support himself in them; and when he thought this Army would not fight in his so bad a Cause, he then disbanded it, and by that, as well as the Desertion of the Throne, owned himself vanquished. Can any body deny the Prince of *Orange* a Right of making what advantage he could of his Successes? And therefore I doubt not but that the Prince might, if he pleased, have taken upon him the Title of King immediately upon King *James's* first Departure, and have summoned a Parliament to recognize his Title, as *Henry VII.* did after his Victory at *Bosworth-Field*; nor would this have made him a Conqueror over the Kingdom, since he never made war against it, but came to deliver it from Tyranny and Oppression. Nor did *William* the Conqueror himself, by his Victory over King *Harold*, ever pretend to a Right by Conquest over the whole Kingdom, but only over the Estates and Persons of those who had fought against him, as I have fully proved at our tenth Meeting. Nor did *Henry VII.* in the first Speech he made to the Parliament after his taking upon him the Crown, claim a Right to it by Conquest over the Kingdom, as his own words were in that Speech you mention to his first Parliament, but only "by the just judgment of God in giving him the Victory over his Enemy in the Field;" and he then farther declared, "That all his Subjects, of whatsoever State and Condition, should enjoy their Lands and Goods to them and their Heirs as they did before, except such Persons who were to be attainted by Act of Parliament."

Nor is it any Objection against his Right by Conquest, that he obtained no Victory in a pitched Battle; since I never heard or read, that to make a Prince a Conqueror, it is necessary that so many thousand Men should be killed upon the spot: for admit the adverse Prince against whom he fights will thro Cowardice desert his Army, or that his Army will desert him, either thro fear, or a sense of the greater Justice of the adverse Prince's Cause, or an Affection to his Person, so that it never comes to a Battle; yet it has been in all Ages looked upon as all one with a Victory, as I can show you from several Examples in History; and particularly in *Plutarch*, concerning *Pyrrhus* King of *Epirus*, who making war against *Demetrius* then King of *Macedon*, and both Armies being incamped near each other, the Army of the latter forsook him and went over to *Pyrrhus*, as well out of hatred to him, as esteem for his Enemy: so that *Demetrius* being forced to steal away in disguise, *Pyrrhus* thereupon was immediately in the field proclaimed King of *Macedon*. And I doubt not but the Prince of *Orange* might have done the same, had it not been for his great Moderation, and lest it might give his Adversaries occasion to traduce him, that he came over for no other end than to drive the King out of his Kingdom; and therefore he chose rather to owe the Crown to the free Act of the Nation, than to his Right by Conquest over King *James*. But yet I do not think he hath at all lost that Right, tho he doth not think fit (for fear of giving offence) to insist upon it; and therefore certainly the Convention might very well justify the settling the Crown upon his Highness during his Life, not only as a Conqueror over King *James*, but a Deliverer of the Nation from his Oppression, tho the Prince was pleased to accept it upon those Terms expressed in the late Declaration of the Convention, and upon his free Promise to preserve our Religion, Laws, and Liberties, which he has since also confirmed by his Coronation-Oath.

In vita Pyrrhi.

But as to what you say, that the Prince made the King's Army desert him, and wrought the People into Hatred of his Person by lying Stories and mean Arts, it is altogether untrue; since I know of no Reports he made of the King, or his Government, but what are in his first Declaration: and that is certainly true in every part of it, as has been justified by the express Declaration of the Convention in every Particular, except that concerning the Prince of *Wales*, which I confess is still left undecided; because (as I have already proved) it is impossible to give any certain judgment in it, unless the Witnesses as well as the Infant himself could be brought over hither. Nor doth the Prince in his said Declaration say any more concerning that Business, "than that there are violent Suspicions that the pretended Prince of *Wales* was not born of the Queen." But for the Report of the secret League with *France*, for the Extirpation of the Protestant Religion, as there is no such thing

thing in his Highness's Declaration, so the spreading of it cannot be laid to his charge, since he never gave it out as I know of; yet there are certainly great Presumptions, and too much cause of Suspicion that it may be so, as I proved at our last Meeting. But tho you will not allow the Prince the Title of our Deliverer, yet I am sure the greatest part both of the Clergy and Laity of the Church of *England* were once of Opinion, that King *James's* Violations both upon our Religion and Laws were so great, that nothing could preserve the Kingdom from a total Subversion in its established Religion and Civil Constitution, but his Highness's coming over; and most of the Bishops were of that Opinion, who, now the Government is settled, refuse to take the Oath of Allegiance to their present Majesties.

But to answer what you say, that the manner of *Henry IV's*, and *Henry VII's* coming to the Crown, doth not at all agree with the Case of King *William*, because they claimed by Right of Blood, which you say King *William* cannot do; that is not so in respect of the Queen, who has certainly a Right to succeed her Father by Right of Blood, in case the Prince of *Wales* be not the true Son of the Queen; and until he can be proved so, we must at present look upon him as if he were not so at all. So that the Convention hath done no more in settling the Crown upon the King during his Life, than what the Great Council of the Kingdom have frequently done before upon other Vacancies of the Throne, as I have proved from the Examples of *William Rufus* and *Henry I.* King *Stephen*, King *John*, and *Henry III.* And it is very hard to suppose the whole Nation to have been guilty of Perjury and Treason, upon their swearing to, and fighting for those Princes after they were so solemnly elected, crowned, and invested with the Royal Power. But as for *Edward III.* his first and best Title was from the Election of the Great Council of the Kingdom, who I doubt not but if they had found him unworthy of the Royal Dignity, by reason of Folly or Madness, or tyrannical Principles, would have set him aside, and have made his younger Brother King; a Protector to govern in the King's Name, with Royal Power, having never been known in *England* till the Reign of *Henry VI.* But as for *Henry IV.* notwithstanding his Claim by Right of Blood, I have already proved that the Parliament, by their placing him in the Throne, did not at all allow it; nor is any such Right recited in the Act of the 7th of *Henry IV.* which by the Crown is entailed upon that King and his four successive Sons. And tho it is true *Henry VII.* also claimed the Crown by Right of Inheritance, in his Speech in Parliament, yet they were so far from allowing it, that they do not so much as mention it in that Act of Settlement, which, as I have recited, they made of it upon that King and the Heirs of his Body. And therefore I think I may still maintain, that the Convention have done nothing in the present Settlement of the Crown, but what hath been formerly done upon every Vacancy of the Throne, either by Deposition or Resignation of the King, or Abdication, or Forfeiture of the Crown; as in the present Case of King *James*, in which the Convention have done no more than exercised that Power which has always been supposed to reside in the great Council of the Kingdom, of settling the Crown upon such a Prince of the Blood Royal as they shall think best to deserve it.

Thus much I have said to preserve the antient Right of the Great Council of the Nation. But to put all this out of dispute, I have been credibly informed that the Princess of *Denmark* her self did, by some of her Servants in both Houses, as well of the Lords as Commons, declare, upon a great Debate that arose about securing her Highness's Right to the Crown immediately after her Sister the Queen, that her Highness had desired them to assure the Convention, that she was willing to acquiesce in whatever they should determine concerning the Succession of the Crown, since it might tend to the present Settlement and Safety of the Nation; which I think is a better Cession of her Right to his present Majesty, than any you can prove that the Empress *Maud* made to her Son *Henry II.* or than the Countess of *Richmond* ever made to her Son *Henry VII.*

M. You have often talked of this Forfeiture, and extravagant Power of your Convention, by which you suppose they are not obliged to place the Crown upon the Head of the next Heir by Blood, which I shall prove to be a vain Notion: for if there be an absolute Forfeiture of the Crown, the Government

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would have been absolutely dissolved: for since there is no legal Government without a King, if the Throne were really vacant, and that the People might place whom they pleased in it, yet the Convention can have no power to do it as their Representatives; since upon your supposed Dissolution of the original Contract between the King and the People, there was an end of all Conventions and Parliaments too. And therefore if a King could have been chosen at all, it ought to have been by the Votes of the whole Body of the Clergy, Nobility, and Commons, in their own single Persons, and not by any Council or Convention to represent them; since the Laws for restraining the Election of Parliament-men only to Freeholders, are, upon this supposed Dissolution of the Government, altogether void; and if you say such a way of Election is now impossible, I shall do so too: but however, it plainly shews the Absurdity of supposing a King could ever now be fairly elected, were all the Blood Royal totally extinct.

As for what you say concerning that Cession which the Princess of *Denmark* made of her Right to the Crown, I never heard any thing of it before; but admit it were so, this could only serve in relation to her self, and she could not give up the Right of her Brother the Prince of *Wales*, no nor that of her own Children, if God should give her any.

F. This Objection concerning the total Dissolution of the Government, proceeds from a want of your Consideration of what the antient Government of *England* was, not only before, but a good while after your pretended Conquest; which was not a settled hereditary Monarchy, but a testamentary or elective Kingdom, where the Kings, being often recommended by the Testament of the precedent King, were chosen out of the Royal Family, tho not according to the Rules of Succession now in use: and therefore in all such Governments, it is very well known, that there was, at the first Institution of Kingly Government among them, a great Council or Assembly of Estates of the whole Kingdom appointed, who upon the Death of the last King and Vacancy of the Throne, were still to meet of course to appoint a Successor, which was commonly one of the Sons of the last King, or at least some other Prince of the Royal Blood. Thus it was till of late years in *Denmark* and *Sweden*, and so it was antiently in *France* during the Succession of the first Race; as also in *Spain* during the Government of the *Vandals* and *Gothick* Princes; and so it likewise was in *England* during the whole Succession of our *English-Saxon* Kings, and so I have also proved it continued till *Edward I.* And tho since his time that the Crown hath been claimed by Right of Inheritance, yet in all times precedent it is apparent, that the great Council of the Kingdom, upon the Death of every King, assembled by their own inherent Authority, to consider whom they should place on the Throne, which they then looked upon as vacant. And therefore tho I grant in the case of *Edward I.* the Parliament did not only ordain him Successor to his Father, but also recognized his Right by Blood; yet for all this they still retained their antient power of meeting without Summons from the King, he being in the *Holy Land*, and they not knowing whether he was alive or dead. So that it is a false Assertion to affirm, that there can be no Civil Government without a King, since in all those Vacancies of the Throne, it is plain, the Government devolved of course upon the great Council of the Nation. And tho it is true there can be now no Parliament without a King, according to the present Notion and Acceptation of that Term, yet before that word was ever in use (which is no older than about the middle of the Reign of *Henry III.*) it is plain, that our great Councils often met by their own inherent Authority without any King, and preserved the Peace of the Kingdom till a new King was either chosen or declared. And tho 'tis true the Crown hath been long enjoyed by those who have claimed by Inheritance, yet there is no reason for all that, if the like Cases should fall out as have done in former times, why the Government should devolve to the mixed Multitude now, any more than it did then; since it may be as well supposed, that the same tacit Contract still continues of maintaining the original Constitution of our great Councils, which I have proved to be as antient as Kingly Government it self. And tho perhaps the Form of choosing or sending these Representatives of the Nation may have been altered in divers Particulars by former Laws or received Customs, yet this is nothing to the purpose,

as long as the thing it self remains the same in substance as it was before ; for it can never be thought to have been the intent of the People who established this Form of Government, that upon the Extinction of the Royal Family, the Government should be so quite dissolved, as that it should be left to the Multitude to chuse what Form of Government they should think fit, or else fall into Anarchy and Confusion.

Therefore to conclude, I wish you would be persuaded to own this Government as it is now established, and to take the Oath of Allegiance which is enjoined by the Declaration of the Convention, who are the only proper and legal Judges we can now have of conferring the Rights of those to whom our Allegiance is due. And if in case of a Dispute about the right Heir of the Crown, the People of this Nation were not all obliged to stand to the Decision of this Assembly, we must necessarily fall together by the ears, and fight it out as they do in the *East-Indies* ; where, upon the Death or Deposition of a King, he has still the Right who can conquer his Competitors in Battel.

M. Well, I wish there were not something very like it practised here of late ; for I think you will grant, that if the Prince of *Orange's* Party had not prevailed over the King's, the Convention would never have placed the Crown upon his Head.

But I must beg your pardon if I cannot agree to your Proposals of taking the new Oath of Allegiance to King *William* and Queen *Mary*, since I have already taken the Oaths of Supremacy and Allegiance to King *James* ; and I do not believe that any Power on Earth can disengage me from that Oath as long as he and his Son the Prince of *Wales* are alive : For as to your Doctrine of Abdication or Forfeiture, they are too hard for my Reason to understand, or for my Conscience to comply with ; and therefore it is all one to me whom your Convention places on the Throne, since I am very well satisfied that none but the King can have a Right to it.

F. I wish I could see some better Reasons for this Opinion of yours, than those you have already given ; for if you could convince me that the Nation hath done any thing in this Revolution, which cannot well be justified by the antient Customs and Constitution of the Kingdom, I should come over to your Opinion. But if King *James* has truly abdicated or forfeited the Crown (as I hope I have sufficiently made out) and that your supposed Prince of *Wales* either is not really, or else cannot now be proved to be the true Son of the Queen, by reason of those Obstacles and Impediments I have shewn you ; I cannot see any thing to the contrary why you should not be wholly free, and discharged from your former Oath of Allegiance to King *James* : So that King *William* and Queen *Mary* being now placed on the Throne, your Allegiance to King *James* and the supposed Prince of *Wales* is lawfully determined. Pray tell me therefore why you cannot take this new Oath of Allegiance, since you have the Judgment and Declaration of the Convention, which is the Representative of the whole Nation, to justify you in so doing.

M. I must tell you once again, that I think Allegiance is not only due to the King by the Law of the Land, but also by the Laws of God and Nature, and consequently cannot be dissolved by any subsequent Judgment of a Convention, who are and always ought to be Subjects to him and his right Heirs, as long as they are in being ; and therefore I should not allow the Prince and Princesses of *Orange* for such, were the King now actually dead. Nay, if King *James* himself had staid in *England*, and had been so over-awed by fear, as to have declared in Parliament, that the Prince of *Wales* was not his true and lawful Son born of the Queen, and had thereupon settled the Crown upon the Princesses of *Orange* as his Heir apparent ; I could never have thought my self obliged to swear Allegiance to her, or to own her for my lawful Sovereign, as long as the Prince of *Wales*, or the Heirs of his Body, are in being : since I am very well satisfied, and that by unexceptionable Proofs, that he is really the Son of the King and Queen ; for I think I have sufficiently made out by several Declarations of Parliament, that the Hereditary Right of the Crown can never be defeated nor altered by any Statute whatsoever, but according to the Act of Recognition of King *James I's* Title (which I have already urged) the Crown ought to descend to the next Heir by Blood, according to the Rules of Descent I have now laid down.

F. I cannot but admire your Obstinacy in this matter, which proceeds from your old Error of believing, that there is a Natural or Divine Right of Succession to Crowns different or abstracted from the Civil and Political Laws and Constitutions of particular Kingdoms; which I think I have already confuted, by shewing you that there was no such thing in nature as a Patriarchal Right in *Adam* or *Noah*, or their Heirs, nor yet to any other King as their Assigns or Representatives. And therefore tho I grant that Allegiance to every lawful King is due by the Laws of God and Nature, yet who that King is, or who is to be his lawful Successor in limited or mixt Monarchies (as ours is) can only be determined by the Assembly of Estates of the whole Nation: for notwithstanding all you have said, there is a very great Difference between the legal Rights of Princes, and the natural Rights of Fathers and Husbands, which yet may cease and be dissolved in some Cases, as I have already sufficiently proved. Yet I think it is evident, that not only a legal Title and legal Authority may be parted from each other, but that legal Titles and legal Authority may be rightfully separated from the Persons to whom they were once due, which natural Rights can never be. A King may cease to be a King, tho a Father can never cease to be a Father; for Laws have not the same force and power that Nature has. Now all Men confess this Separation may be made by a voluntary Resignation, as also by Conquest in a just War; both which will divest such a Prince of all Right and Authority to govern; and if it may be done by either of these ways, his Right and Authority is not inseparable from his Person. Since then there is no natural inherent Property in Lands or Kingdoms, but what proceeds from the particular Laws of each Kingdom or Commonwealth; therefore whoever the supreme Power, appointed by the Constitution of such Kingdoms, shall judge or determine to have a true and legal Right to the same, are to be owned and esteemed as the true legal Owners and Possessors thereof, by all the Subjects: so that if a King can part with his Kingship, it is possible he may lose it too, since there are more ways than one of parting with that which may be parted with. If then a voluntary Resignation of a Crown, or Conquest in a just War, can give another Prince a just Title to it, I cannot see why a tacit Abdication, or Forfeiture of a Crown, upon a limited King's total Breach of the fundamental Laws and Constitution of the Kingdom, should not as much discharge all the Subjects of their Allegiance to him, and also give the great Council, as the Representative of the Nation, a like Right of ordaining a Successor upon such a Vacancy of the Throne; and who being once placed therein, all the People of the Nation ought to pay the same Allegiance to him, as they did to his Predecessors.

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But as for the latter part of your Supposition, that the right Heirs of the Crown by Blood must always necessarily succeed to it, that is likewise founded upon two very false Principles: first, That a lineal hereditary Succession to the Crown is established by the fundamental Laws and Customs of the Kingdom. Secondly, That the Succession to it cannot be limited by the Parliament or great Council of the Nation. The former of which Suppositions I have confuted at our last Meeting, and as for the other, you cannot deny but the Crown has been frequently settled and limited by Act of Parliament, contrary to the common Rules of Succession, as hath been sufficiently proved by the Statute above-mentioned of *Henry VII.* as also by those several Acts concerning the Succession in *Henry VIII.*'s time; and so it continues at this day by the Statute of the 13th of Queen *Elizabeth*, whereby it is declared "Treason, during

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"the Queen's Life, for any Person to affirm that the Queen and Parliament had not power to make Laws to limit and bind the Descent and Inheritance of the Crown; or that this Act was not of sufficient force to bind, limit, and govern all Persons, their Rights and Titles, that in any way claim any Interest or Possibility in or to the Crown of *England* in Possession, Remainder, Succession, Inheritance, or otherwise howsoever; and every Person so holding or affirming, after the Decease of the Queen, shall forfeit all his Goods and Chattels." So that I can see no just reason you can have to refuse swearing Allegiance to their present Majesties and their Successors, according to the Limitation in the said Act.

M. Well, I see it is in vain to argue these Points any longer with you, since it would only force me to repeat the same things over again, which will nei-

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ther edify you, nor my self; only give me leave to tell you thus much, that the last part of your Argument (which is the only thing that is new in all your Discourse) is founded upon a very wrong ground: for tho I should grant, as I do not (since I think this Act you last mentioned is expired) that the Crown may be limited or intailed by Act of Parliament, contrary to the due Rules of Succession; yet even that will not hold in respect of the present Settlement thereof by the Convention, upon the Prince and Princess of *Orange* for their two Lives: since you cannot but know that no Parliament yet was ever so presumptuous as to take upon them to settle or limit the Succession of the Crown, without the Consent of the King or Queen then in being. Whereas the present Settlement was first made by the Convention, upon the making of the Prince and Princess King and Queen; tho I grant it was afterwards confirmed by another pretended Act, whereby all Princes that are or shall be *Roman* Catholicks when the Crown shall descend unto them, are debarred from their Right of Succession. This, tho I grant to be made after the Prince and Princess of *Orange* took upon them the Title of King and Queen; yet since that Statute was not made in a Parliament called by the King's Writs, but in a Convention, who owe their meeting wholly to the Prince of *Orange*'s Letters, it is not only void in respect of the Subject-matter, but also in the manner of making it; and therefore I cannot believe that the Throne was ever vacant. And I have as little reason to be satisfied that the Prince and Princess could be lawfully placed therein, or that all *Roman* Catholick Princes can ever be barred from their Right of Succession whenever it may fall to them.

F. If this be all you have farther to object, I think I can easily answer it; for in the first place, I have already told you, that the Convention did not take upon them to create or make any new Form of Succession to the Crown, but only to declare that the Prince and Princess of *Orange* are rightful and lawful King and Queen of *England*: for upon supposition of King *James*'s Abdication of the Crown, and that the Prince of *Wales* cannot be taken for the lawful Son of the King till he can be brought over, and that his Legitimacy be duly proved, it must till then certainly be their Right, and no others: and as for King *William*'s holding the Crown during his own Life, I have already told you it was not done without the tacit Consent of the Princess of *Denmark* her self, tho I doubt not but it may also very well be justified upon these Suppositions of the Forfeiture of the Crown by King *James*, and the Conquest the Prince of *Orange* made over him; which are sufficient in themselves to bar any legal Claim of those that either are or may pretend to be right Heirs.

But as for the other part of your Objection, whereby you will prove, that Popish Princes cannot be excluded from the Succession, because the Act was made not in a Parliament, but a Convention: This wholly proceeds from your want of Consideration, that at the first Institution of the Government, and long after, whilst the Kingdom continued Elective, there was no difference between a Great Council or Convention, and a Parliament; for pray call to mind the four first Great Councils after your Conquest, (reckoning that for one wherein King *William* I. was elected or declared King) whether it was possible for those Councils to be summoned in the King's Name, before any body had taken upon themselves the Title of King. The like I may say in the case of King *John*, and *Henry* III. and that this continued after the Succession was settled in the next Heir by Blood, appears by that Great Council that was summoned after the Death of *Henry* III. which recognized or ordained his Son Prince *Edward* to be his Successor. So likewise the Parliament that deposed King *Edward* II. sat both before and after his Deposition and Resignation, and elected his Son *Edward* III. to be King, and appointed his Reign to begin from the time of their Election, and not of his Father's Resignation of the Crown: so also upon the Deposition of King *Richard* II. the same Parliament that deposed him, placed *Henry* IV. in the Throne; and tho the Writs of Summons were in the Name of King *Richard*, and they were never re-summoned or new-elected in the Reign of *Henry* IV. yet did they still continue to sit, and made divers new Acts, and repealed several old ones; all which hold good to this day.

And that the Parliament are the only proper Judges of the Right of Succession even without the King, you your self must grant, or else how could they declare in 39th of *Henry* VI. that the Claim which *Richard* Duke of *York* made

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to the Crown could no way be defeated? And certainly if that unfortunate Prince, King *Henry VI.* had had sufficient Power or Interest in that Parliament, they might and would have adjudged the Duke of *York's* Claim to have been groundless, and contrary to Law, and then I believe it would scarce have ever been heard of again.

But to make it out beyond exception, that a Convention may become a Lawful Parliament, tho never called by the King's Writs, when the King's Authority and Presence come once to be added to, and joined with it, appears by the first Parliament of King *Charles the Second*; which tho summoned in the Name of the Keepers of the Liberties of *England*, yet nevertheless continued to sit and make several Acts which hold good to this day: and I doubt not but they might have made the like Limitations of the Crown in respect of *Roman Catholick* Princes, as the Convention have now done, and that it would have held good at this day, since it is so much for the Security of our Religion, Liberties and Properties, that it should be so; since we have found by dear-bought Experience in the Reigns of the four last Kings of the *Scottish* Line, that still as they began to favour the Popish Religion and Interest in this Kingdom, so did the Protestant and true *English* Interest, in respect of our Religion, Liberties and Properties, still decline, till at last they were like to be totally ruined and extirpated: for that restless and dangerous Faction very well know, that there is no means possible for them to re-establish their Superstition among us by due and legal Methods, but only by introducing Arbitrary Power, taking away Parliaments, or else making them wholly to depend upon the King's Will, as we see was laboured, and almost effected in the Reigns of the two last Kings. And therefore I cannot but believe that the present Parliament has not only acted wisely, but also legally, to enact that for the future no Prince, who is actually a *Roman Catholick*, shall succeed to the Crown, tho he be next Heir by Blood.

M. I must still tell you, I am as little satisfied with your Suppositions of the Forfeiture of the Crown by King *James*, and the Conquest of the Prince of *Orange*, as I am with your Instances out of History concerning the Power of the Great Council's meeting and chusing a King by their own inherent Authority; since, besides that it was done by Usurpation in those rough and unsettled times, I believe if the antient Writs of Summons were now in being, you would find that they were called by those Usurpers, tho not by the Title of Kings. But I defy you to show me, since the Reign of *Edward the First*, any Parliament ever called without the King's Writs of Summons; and tho upon the Deposition of *Edward* and *Richard the Second*, the Parliaments you mention might continue to sit and transact publick Business, yet was it during a plain Usurpation upon those Princes, whom you your self must grant to have been unlawfully deposed: And therefore we find upon the Parliament-Roll of the 21st of *Richard the Second*, that an Act of the 1st of *Edward the Third*, confirming the Judgment given upon the two *Spencers*, was not only repealed in Parliament, but declared to be unlawful, because *Edward the Second* was living, and true King, being imprisoned by his Subjects at the time of that very Parliament of 1 *Edward III.* But as for your last Instance of a Convention's declaring it self a Parliament in the Reign of King *Charles the Second*, there is a great deal of difference between them and the present Convention, since they did not take upon them to declare or make a King (as this Convention has done) but only to recognize him to be their Lawful Sovereign; which (as I have already told you) being that which was their Duty to do, they might very well justify, though they were not summoned by the King's Writs: but however all their Acts were looked upon as made without Legal Authority, and therefore were confirmed in the first Legal Parliament of King *Charles's* Reign.

But as for the Authority of the Statute of the 13th of *Elizabeth*, whereby you would prove, that the Parliament has at this day power to alter or limit the Succession of the Crown; besides that such an Act being against the fundamental Rules of Succession, was void in it self; yet if you please to look upon the Act in *Rastal's* Statutes, you will there find it was only made to serve a present turn, and to keep the Queen of *Scots* and her Party from enterprizing any thing against Queen *Elizabeth*: and therefore it is there only declared to be

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B. H. S. p. 40.

be Treason during the Queen's Life for any Persons to maintain, that the Queen could not, with the Authority of the Parliament, limit the Succession of the Crown: and as for the last Clause, that makes it Forfeiture of Goods and Chattels to maintain the contrary after her Decease; this was made to strengthen and confirm the former part of the Statute, which was a Provision and Security against such Pretences and Practices as had been lately made against her by the Papists, on the behalf of the Queen of Scots's Title. And this Clause could not take effect after her Death, but was added to preserve Queen *Elizabeth's* Memory from being defamed after her Decease, or being slanderously charged with the heinous Crime of usurping the Crown; which must have been the inevitable Consequence of affirming, that she and her Parliament could not limit the Succession. For to confess the truth, I think Queen *Elizabeth's* best Title was by Act of Parliament, since her Legitimacy might be justly questioned, by reason that her Mother's Marriage was declared unlawful by the 28th of *Henry* the VIIIth, and she was as good as declared illegitimate by her Father in that very Act that settled the Crown upon her. But that this Statute of the 13th of Queen *Elizabeth* is now looked upon as expired, appears in *Pulton's*, and all other late Collections of the Statutes since her time; wherein the Title of the Statute is barely mentioned with *EX P.* immediately following it, to shew it is looked upon as expired. So that you are mistaken to affirm that the Convention has done nothing in the late Limitation of the Crown, but what may be justified from that Statute; therefore if it be not Law at this day, I think they had no Authority to alter the Succession of the Crown from the right Line, let them be of what Religion they would.

F. I see you do all you can to evade the Force of my Authorities from History and direct Matter of Fact; and therefore as to what you say, that those were rough and unsettled Times, and therefore no Precedents to be drawn from thence, this is to beg the Question: for what could be the Law concerning the Succession of the Crown for the first hundred and fifty Years after the Conquest, but the constant Usage of the Great Council of the Nation, as low as the Reign of *Henry* the Third? And it is a bold Assertion to accuse the whole Nation of Perjury, and Rebellion against their Lawful Kings, during all those Successions I have now instanced in: nor have you any thing to say against those Parliaments that met in the 1st of King *Edward* III. and *Charles* II. but that their Meeting was lawful, because it was only to recognize those Kings, and not to make them; which is indeed to beg the Question, since you cannot deny but those Parliaments are held for good, notwithstanding they were not called by the King's Writs. But as for making a King, the present Parliament have not taken upon them to do it, since they do not in the Act for the Succession elect King *William* and Queen *Mary* to be our Lawful King and Queen, but only declare or recognize them to be so, upon supposition that the Prince of *Wales* is either an Impostor, or else his Legitimacy impossible to be tried and determined by them. Nor are your Objections material against the Authority of those Acts of Parliament which were made in the 1st of King *Henry* IV. and *Charles* II. which were never summoned by those King's Writs. For as to the first of those Instances, most of those Acts of *Henry* IV. stand good at this day, without ever being confirmed by any subsequent Parliaments. And tho I grant that the publick Acts made in the first of King *Charles* II. were confirmed in the next Parliament of that King, yet this does not prove that they would have been void without it; since divers private Acts passed in that Parliament, which were never confirmed in any other, and yet are held for good: as particularly an Act of that Parliament for making the Church of *St. Paul's Covent-Garden* Parochial. And this Act, tho never confirmed, was yet adjudged to be in force by the Lord Chief Justice *Hales*, and the rest of the Justices of the King's Bench, in a case concerning Rate-Tythes between the Minister and some of the Parishioners of the said Parish. And that not only all the private Acts of that Parliament, but some publick ones also, tho never confirmed in the following Parliament of the 13th of King *Charles* II. are yet held good in Law, appears by these that follow, viz.

1. An Act for Continuance of Procefs, and judicial Proceedings, continued.

12 Car. II.

6. 3.

By

By which all Writs, Pleas, Indictments, &c. then depending, were ordered to stand and be proceeded on, notwithstanding want of Authority in the late Usurpers. And therein it was farther ordained, that Process and Proceedings in Courts of Justice should be in the *English* Tongue, and the general Issue be pleaded, till *August 1. 1660.* as if the Acts made during the Usurpation, for that purpose, had been good and effectual Laws.

And upon this foot only stand many Fines, Recoveries, Judgments, and other Proceedings at Law had and passed between *April 25, 1660.* and *August 1. 1660.*

2. *An Act for conforming and restoring of Ministers.*

12 Car. II.

This Act is usually to this day set forth and pleaded in *Quare impedit*, tho' it was said to be refused upon Debate to be confirmed in the House of Commons, 13th of *Car. II.* when divers other Acts of the same time were confirmed; yet both these Acts, having no other Authority but from that Convention (as you call it) have been judged and constantly allowed to be good Laws for above these thirty Years.

17.

13 Car. II.

17, &c.

Nor is what you have now said true, to prove the Statute of the 13th of *Queen Elizabeth* (whereby the Crown is declared capable of being limited by Act of Parliament) to be now expired; since it is plain, by the purport of the Act, that it is declaratory of the former Laws of *England*, made in King *Henry VIII* and *VIII*'s, and other Kings Reigns, whereby the Succession of the Crown had been frequently entailed upon those who were not the next Heirs by Blood: and tho' the Queen be only mentioned in it, yet it certainly as much concerns her Successors and all future Parliaments, as the Oath of Allegiance, in which the Queen is only mentioned, does all future Kings and Queens; and it is not only made Treason during her Life, but also there is a loss of Goods and Chattels to be inflicted on all those who shall maintain after her Decease, that the Queen and Parliament had not power to limit the Succession. And if a Parliament in her Reign could do this, I desire to know whence it is that the present Parliament may not have the like Power?

As to what you alledge concerning the Judgment against the two *Spencers* being reversed in the 12th of *Richard II.* because done whilst *Edward II.* was still alive; I desire you would take notice, that this Parliament of *Richard II.* was wholly made and past by King *Richard* after the Banishment of the Dukes of *Lancaster* and *Norfolk*; and that as well the Lords as Commons were in such fear of the Arbitrary Power he then exercised, that they past whatever he would. And in this Parliament it was that the Proceedings against the Chief Justice *Tresilian* and his Fellow-Judges, who had been condemned and executed by Judgment in Parliament in the 11th of this King, were reversed. And to prove the Illegality of this Parliament, you need but consult the Statute-Book in the 1st of *Henry IV.* where you will find one of the first Statutes after his coming to the Crown, is to repeal all Acts and Proceedings made in that last Parliament of *Richard II.*

M. I doubt this will not do the business; for we maintain, that *Henry IV.* as also his Son and Grandson, were Usurpers, and consequently all the Acts made in their Reigns were null and void.

E. I will grant you for once, that *Henry IV.* was an Usurper, and that *Edward III.* was so also during his Father's life-time; but then it doth not follow, that all the Laws and Statutes made during those times were null and void, since you must needs know the contrary; for even in that Parliament of the 21st of *Richard II.* tho' 'tis true that Judgment against the *Spencers* was reversed for the reason you have given, yet did that Repeal extend to no other Statutes but that, tho' made in the same Parliament of *Edward III.* whilst his Father was yet living: But they are all of them held for good at this day, as are also all the Statutes of those three *Henrys*, whom you suppose to be Usurpers, which have not been repealed by any subsequent Statutes, as I can assure you those of the first of *Henry IV.* are not, and therefore are good Laws at this day. So that nothing can be a plainer Proof than this, that let the King's Title to the Crown have been what it would, yet Allegiance was due to them as long as they continued in the Throne.

Therefore to conclude, let me tell you, I think it behoves you, if you mean to keep that Office you hold under the Government, to take the Oath of Al-

legiance to their present Majesties, since you owe your Protection to their Government, which certainly deserves a temporary Allegiance as long as you enjoy the Benefit of it. And indeed, the Oath it self is so loosely worded, that methinks any Man may take it without any scruple, since it doth no ways declare, that the present King and Queen have an Hereditary Right to the Crown, but only the Person swears to bear true Allegiance to their Majesties King *William* and Queen *Mary*; which I think even Strangers and Denizens are bound to take as long as they continue in the Kingdom.

M. I am sorry you should think me, after so long an Acquaintance, capable of doing any thing against my Conscience for any worldly Advantage whatsoever; and therefore I must freely tell you, that as for the Employment I hold, I will rather part with it, if it were ever so great, than do any thing against my Conscience, and that Reputation I have hitherto maintained in the World of being an honest Man.

And therefore I cannot take the Oath as a mere Denizen, that owes Protection to the present Government, not only because this Oath is inconsistent with that I have already taken, but also there is much more required of those that owe a Natural Allegiance to their rightful King, than can be required of Strangers, till they become naturalized by Act of Parliament: And therefore it is, that when any War breaks out between neighbouring Princes, all such Denizens, who do not become absolute Subjects of this Kingdom by Naturalization, if they will act like honest Men, must look upon themselves as obliged either to quit the Kingdom in case a War be declared against their natural Prince, or at least are obliged not to act any thing to his prejudice, tho they may still inhabit and traffick here; which is a quite different case from those who are not only born the King's Subjects, but have also taken the Oath of Allegiance to him. And therefore I can by no means think it lawful to take this new Oath to King *William* and Queen *Mary*, tho it were required in no higher a sense than as King and Queen *de facto*, since it can no ways consist with that Oath which I have already taken to King *James* and his right Heirs, as I shall prove to you another time (since it is now very late) from the true Sense and Meaning of those words, *I will be faithful, and bear true Allegiance, &c.* which can only be sworn to such Kings and Queens, who besides a bare Possession, have also a Legal and Hereditary Right to the Crown.

F. I shall be very glad to hear you farther upon this Question; for if that can be made out, I fear too many of the Clergy as well as Laity, by mistaking the true sense of this Oath, have been forsworn. But pray tell me when I shall wait on you, and hear what you have further to say upon this important Subject.

M. Pray let me see you two or three days hence, and then I shall be at leisure; in the mean time I am your humble Servant.

F. And I am yours.





Bibliotheca Politica.

DIALOGUE XIII.

- I. Whether an Oath of Allegiance may be taken to a King or Queen *de facto*, or for the time being.
- II. What is the Obligation of such an Oath, whether to an actual Defence of their Title against all Persons whatsoever, or only to a bare Submission to their Power.
- III. Whether the Bishops who refused to take the Oath of Allegiance to their present Majesties, could be lawfully deprived of their Bishopricks.

F.  I R, I hope I do not interrupt you by coming too soon; for the truth is, since I intend that this shall be the last Dispute I shall ever have with you upon this Subject, I was very desirous to have it dispatched as soon as I could, that when I have once discharged the Duty of an old Friend and Acquaintance, my Mind may be at rest, which side soever you take.

M. Dear Sir, I thank you, and tho I intended to go abroad this Evening upon an Appointment, yet I will now put it off, that I may enjoy your better Conversation; therefore pray begin where you left off, and prove to me that I may lawfully take this new Oath of Allegiance to King *William* and Queen *Mary*.

F. I cannot see any reason why you may not safely do it, since our best Common Lawyers are of this Opinion; for my Lord *Coke*, in his third Institutes, in his Notes upon the Statute of Treason, the 25th of *Edward* the IIIrd, gives it for Law, "That this Act is to be understood of a King in possession of the Crown and Kingdom; for if there be a King Regnant in possession, although he be *Rex de Facto*, & *non de Jure*, yet is he Seigneur *Le Roy* within the purview of that Statute, and the other that hath Right, and is out of Possession, is not within this Act," &c. And if it be Treason to levy War against him, or to conspire his Death as long as he continues King, it can only be so, because the Subjects Allegiance is then due to him, for that all Men have either taken the Oath of Allegiance, or else are supposed to have done it. P. 7.

M. I must beg your pardon, if I cannot come over to your Opinion neither in point of Law or Reason; for as long as I am persuaded in my Conscience that King *James* is King *de Jure*, so long must the Obligation of my former Oath last: and I suppose you will grant that it is as impossible to owe Allegiance

legiance to two Kings at once, as it is to serve two Masters: and therefore you must pardon me, if I suppose that my Lord *Coke*, depending too much upon the commonly received Sense of the Statute of the 11th of *Henry* the VIIIth, which he quotes in the Margin, may be mistaken in this great point, and may have also given an occasion to divers others of his Profession to fall into the same Error.

F. I doubt not but my Lord *Coke*, and others of his Profession, who maintain the same Opinion, may very well be defended, as well from that Statute as other Authorities; but to pass by that at present, I shall first discourse with you upon this point, of the Lawfulness of taking this Oath to their present Majesties King *William* and Queen *Mary*: and therefore you misunderstand me, if you believe that I think this Oath doth require from you the Performance of all those Duties of Allegiance and Subjection which I my self am obliged to, who am fully satisfied of their Title, and therefore must venture my Life and Fortune in their Quarrel to the utmost of my power against all Persons whatsoever. But all that I think can be required of you, is, that whereas King *William* and Queen *Mary* are actually in possession of the Regal Power, so long as they continue thus possessed of it, you may, I think, swear that you will be so far true and faithful to them, as not to enterprize any thing against them, but that you will pay them that Obedience and Submission which may be lawfully paid to an actual Sovereign; not engaging hereby to uphold them in the possession of the Throne against King *James*, and without debarring your self from exerting that Allegiance you have sworn to him upon any emergent safe Opportunity for the recovery of his Right.

M. I must beg your pardon, if I cannot assent to take this Oath in this low and qualified sense that you would now put upon it, since besides the Signification of the words themselves, I am very well satisfied that the Imposers of this Oath do intend something more than a bare negative Obedience to the present Power; since it is the only Oath which is required from those who take Employments either Civil or Military, and from whom certainly not only a passive Obedience or Submission, but also an active Obedience and Assistance is required, in defending the Crown and Dignity of the present King and Queen *de facto* with their Lives and Fortunes against all Persons whatsoever: Or else how could the present Government ever trust them? And all this cannot be sworn to without a breach of that Oath they had formerly taken to King *James*; and therefore if I should take it in this sense (as the Oath it self seems to imply) I should be perjured. Besides, by these words of being true and faithful, I should look upon my self as obliged to reveal all Plots and Conspiracies which I may any ways happen to know of against King *William* and Queen *Mary*; which I think would be derogatory to my Allegiance to his Majesty, since I should thereby discover and accuse such of his good Subjects as endeavoured to restore him, and should thereby hinder him, as much as in me lay, from being restored again to the Throne.

But if we consider the word *Allegiance*, it is yet more strict; and if I should perform it to King *William* and Queen *Mary*, according to the true Intent and legal Sense of that word, I think it could no ways consist with that Oath of Allegiance I have already taken; since Allegiance is thus explained in the next following words of the Oath I have already taken: “*And him, and them, viz. the King and his Heirs, I will defend to the utmost of my power against all Conspiracies and Attempts whatsoever that shall be made against his or their Persons, Crown and Dignities.*” Now what kind of Assistance is here meant by the word *defend*, may be understood from all the Writers of our feudal Laws, who expound the *jus defensorium*, by telling us the word *protegere* implies a Necessity of defending by Arms, as due from the Supreme Lord or Sovereign; and further, that Subjects are in the same sense reciprocally bound to defend the Honour and Dignity of their Sovereign. And these words Allegiance, and the Defence that follows it, may be likewise understood from our feudal Laws, whereby the Vassals were bound by their Oath of Allegiance, as also by virtue of the Tenure of their Lands, to a Military Defence of their Supreme Lord the King, from whom all the Laws of *England* are held: and this is according to *Glanvil*, and all our old Lawyers. And tho I grant that Military Tenures are all now taken away by a late Statute, yet am I still obliged

lized to the like Defence of the King and his Heirs, not only from the words of this Oath, but from the municipal Laws of this Kingdom also; which oblige all the Subjects that are capable to take up Arms for the King when need shall require.

Which may be thus further proved; first, from the antient Laws of *Edward the Confessor* and *William the Conqueror*: by both which, "all the People or Freeman of the Kingdom were to affirm upon their Faith and Oath, within the whole Kingdom, and without, that they will be faithful to their Sovereign Lord King *William*, and every where preserve his Lands and Honours with all Fidelity, and with him will defend them against all his Enemies." To this succeeded that which the Lord *Coke* calls *Legal Ligeance*, or the Common-Law Oath of Allegiance, which he cites out of *Britton* (who writ under *Edward I.*) which all the Subjects were obliged to take at twelve Years of Age at the Sheriff's Court, and at the Leet; without the taking of which, they had no warrant to abide in the Kingdom: and the form of it was to this effect; "You shall swear, that from this day forward you shall be true and faithful to our Sovereign Lord the King and his Heirs, and Truth and Faith shall bear of Life, and Member, and terrene Honour; and you shall neither know nor hear of any Ill or Damage which you shall not offend (that is, oppose) to the utmost of your power."

1b. p. 14.
Vil. Lambardi
L. L. Edwardi,
& L. L. Will. I.
c. 52.
Stat. 51. ibid.
Calvin's Case.
Cowel's Inst.
1.2. tit. 3. §. 14.

The same Author also here informs us, that "five things were observed by all the Judges from this Oath in the Debate of *Calvin's Case*: First, that for the time of its Obligation, it is indefinite, and without limit. Secondly, two excellent Qualities were required, that is, to be true and faithful. Thirdly, to whom; to our Sovereign Lord the King and his Heirs. Fourthly, in what manner; and Faith and Troth shall bear of Life and Member; that is, until the letting out the last drop of our dearest Heart-blood. Fifthly, where, and in what place; in all places whatsoever: for you shall neither know nor hear of any Ill which you shall not offend." Such is the Ligeance which the Law has prescribed in that antient Oath, which is still in force; it is neither circumscribed by Time nor Place; it is unconditionate and unreversed; it is not a lazy passive Allegiance, requiring nothing but pure Submission, but an active and vigorous Loyalty, exacting all that is in the Sphere of moral Possibility, and engaging us to spend our dearest Blood in the Defence of our Sovereign's Person, and the Preservation of his Crown and Dignity.

For it is to be observed, that by the Law this Allegiance is due to the King's Person; so the same Author says it was then resolved by all the Judges, that "that Ligeance was due to the natural Person of the King (which is ever accompanied with the politick Capacity, and the politick Capacity as it were appropriated to the natural) and not due to the politick Capacity only."

To conclude; if my former Oath of Allegiance to King *James* doth still continue (as I am satisfied in my Conscience it doth) I cannot take a new Oath of Allegiance to King *William* and Queen *Mary*, since I should thereby be obliged by the force of these words in the Oath, viz. *I will be faithful, and bear true Allegiance*, to yield it as much to those that are not my lawful Sovereigns, as I am to those that are so; which will be contrary to my first Engagement: for tho I grant that there is no express Declaration of the Right of the present Possessors of the Throne, and that I have heard that the word *rightful* (which was at first inserted into this Oath) was struck out, because as many as could be might be drawn in to take it; yet as long as the words that remain import the very same thing, it is all one as if the word *rightful* were there: for tho the deliberate Omission of the word *rightful* does necessarily infer, that we are not obliged in this Oath to a Recognition of their Right to the Crown, yet does it not infer, that we are not obliged to pay as high a degree of Allegiance as to any rightful King whatsoever. That Omission indeed is an Argument that the word King in the Oath doth not necessarily signify a King *de jure*; but it is no Argument that true Allegiance does not signify true Allegiance, that is an Obligation to adhere to the King against all his Enemies: for there was no Debate, that we know of, about the sense of the word Allegiance, neither is there the least intimation given that they designed to restrain it to a lower signification, tho it was plainly necessary to do it, if they

D. A. p. 24.

they intended to alter the commonly receiv'd meaning of it : wherefore, as the striking out of the word *rightful* would not have prov'd, that they did not intend to oblige us to an active assistance of King *William*, against all Men living, if those words had been expressly inserted in the Oath ; so neither will it prove that the same Duty is not now requir'd of us, if the word Allegiance does, as I have prov'd, *in terminis* import it ; and that as fully, as if it had been in express words requir'd in it.

And that this word Allegiance implies something more than a bare passive Submission or Neutrality from all Subjects, as well as Magistrates and Officers, appears by that Passage in the Statute of the 11th of *Henry VII.* which you have now cited ; where 'tis plainly and expressly declar'd, " That every Subject by the Duty of his Allegiance, is bound to serve and assist his Prince and Sovereign Lord at all Seasons when need shall require." This is so express and authentick a Declaration of the true Duty of Allegiance, that no Art or Sophistry can possibly evade it.

F. I confess you have argued this point of taking this new Oath of Allegiance, not only like a Civilian, but a Common Lawyer also ; and I cannot deny the force of what you have said, that this Oath must extend to an active Obedience, and Defence of their present Majesties in their Right to the Throne, and not only to a bare sly Submission, or a lukewarm Neutrality. And therefore I cannot say but you are justly scrupulous in not taking this new Oath, until you are satisfied of their Majesties Right as well as present Power : but if you will please to observe the purport of this Act of the 11th of *Henry VII.* (which you now mention'd) you will there find it as good as expressly declar'd, that Allegiance is due to him who is *lawful* Sovereign, and the King for the time being is still to be look'd upon as such ; for the words in the Statute are, " that no Man shall suffer for assisting *the King for the time being*," without specifying by what Title he holds the Crown, whether by an Hereditary Right, or by Conquest, Election, or the solemn Recognition of his Title by all the Estates in Parliament. So that by this Act, all that Allegiance that was once due to the former King *de Jure*, becomes thereby wholly transfer'd to the King *de Facto*.

M. I grant what you now say would go a great way to satisfy me, could you once prove that this Statute is now in force, and is not either abrogated or expired ; or else (which I rather incline to believe) is not absolutely void in it self. In the first place therefore I hope to shew you that this was not Law before this Statute was made, and therefore not declaratory of what was Law, but endeavours to make that to be Law, which was not so before : so that the King for the time being, there mention'd, must be a King *de Jure*, or at least one that was presumed such ; because at that time our Constitution knew no other : for that Possession alone was not a sufficient Title before the 11th of *Henry VII.* will evidently appear from these following Remarks.

First, That all the Kings of the House of *Lancaster* are declar'd in the Statute of the first of *Edward IV.* to be Kings *in Deed*, but not of *Right*, and pretended Kings ; and particularly *Henry VI.* is said to be rightfully remov'd from the Government, and his Reign affirm'd to be Intrusion and Usurpation, and himself attainted for being in Arms against *Edward IV.*

Secondly, All Patents of Honour, Charters, and Privileges, which were granted by the House of *Lancaster* ; all Acts of Royal Authority which the Kings of *England* have a right to execute by virtue of their sole Prerogative (nay, Acts of Parliament themselves, particularly those relating to *Shrewsbury*, and some others, which by parity of Reason supposes the rest in the same Condition) all Acts of this nature were confirm'd by the first of *Edward IV.* which is a good Argument that this Parliament believ'd the Authority by which they were perform'd to be defective and illegal ; for we never find any such general Confirmation as these pass upon the Grants of the King *de Jure*.

Thirdly, In the first Year of *Henry VII.* *Richard III.* was attainted of High Treason in Parliament, under the name of Duke of *Gloucester* ; from whence 'tis plain, that as there was no Statute, so neither was there any Common Law to support the Title of a King *de facto* : for Treason is an attempt against the King's Person, his Crown and Dignity, but no Man can commit Treason against himself ; therefore if *Richard III.* had been a King in the sense of this Law,

1b. A. 11.

H. 7. p. 2, 3.

Vid. Lord
Bacon's
Hen. VII.

Law, we may be sure he would not have had such an infamous Censure past upon him after his Death. *Bradshaw*, and his High Court of Justice, were the first that were so hardy as to pronounce a King of *England* guilty of Treason.

Fourthly, If this Notion of a King *de facto* had been allow'd in the 11th of *Henry VII.* the principal Assistants of *Richard III.* could not have been attainted: for *Richard* being actually in the Throne, he was, according to your modern way Ibid. p. 4. of arguing, Rightful King; and consequently the People ought to own him as such, and defend him against all Opposers: and if so, certainly they ought not to be condemn'd as Traitors for doing their Duty, as we find many of those were who fought for King *Richard*.

Fifthly, At the end of this Parliament, *Henry VII.* granted a general Pardon to the common People who had appeared against him in the behalf of *Richard III.* Now Pardon supposes a Fault, and the Breach of a Law, which they could not have been charg'd with, if the Plea of a King *de facto* had been warranted by the Constitution.

F. I must freely tell you, that you do not argue so much like a Lawyer in this Argument as you did in your former; and you have in that forgot to what end those Statutes you mention were made, and what is the purport of them, or else some body hath misinform'd you: for tho I grant that all those hard Expressions you mention, are given of the Kings of the *Lancastrian* Line in those Statutes of the 1st of *Edward IV.* yet do none of these Expressions prove, that they were not true and legal Kings in the Eye of the Law all the while they reign'd; since divers Persons were attainted for High Treason against them, whose Attainders were never revers'd, but stand good to this day; as in particular, the Attainder of the Earls of *Kent*, *Salisbury*, and of *Huntingdon*, who were all attainted by Act of Parliament in the 2d of *Henry IV.* and also the Earl of *Northerumberland*, and his Son the Lord *Piercy*, attainted in the 5th of this King; all which Attainders were never revers'd. So likewise *Richard* Earl of *Cambridge* was found guilty of Treason by his Peers, and his Attainder confirm'd by Act of Parliament in the second of *Henry V.* and tho it is true this Attainder was afterwards revers'd in the first of *Edward IV.* because the said *Richard* was not only his Grandfather, but was also condemn'd for endeavouring to make *Edmund* Earl of *March* his Brother-in-law King of *England*, from whose Sister King *Edward IV.* claim'd the Crown; yet the very reversing this Attainder by Act of Parliament, declares it to have been good until that Repeal, since it was not declar'd void: all which are plain and evident Proofs, that Treason may be committed against the King *de facto*, and consequently that Allegiance is also due to him, and not to the King *de jure*.

I have likewise prov'd that all those Statutes which were made by those Kings, and are not repeal'd, stand good at this day without any Confirmation by King *Edward IV.* and this you have no way to answer, but by instancing in Patents of Honour, or Charters of Privileges granted by those Kings, and confirm'd by *Edward IV.* from whence you will infer, that some other Acts of like nature were in the same Condition; which let me tell you is no good Argument against them: for if you please to read that Statute of *Edward IV.* you mention, you will there plainly see, that the Grants, Patents, and other things there confirm'd, are either judicial Proceedings in the Courts of Justice, or else such Charters, or Patents, which being thought to the prejudice of the Crown, were *ex abundanti cautela* thought necessary to be confirm'd by those particular Persons, Religious Houses, and Corporations, who thought themselves concern'd; nor were all others of like nature which were not so confirm'd, thereby void, since they hold good at this day: and if you understand any thing of our Law, you cannot but know, that no Grants of the King can be made void by implication. And to shew you farther, that the Letters Patent made by *Henry VI.* were look'd upon as good in the Reign of *Edward IV.* it appears from *Bagot's Case* in the Year-Book of the ninth of that King; where a Patent of Naturalization granted by *Henry VI.* tho it were not confirm'd by the Sta- Page 1, 2. tute of *Edward IV.* was by the greatest part of the Judges held to be good, and the Reasons there given for it are very remarkable; since it was urg'd by the Counsel in behalf of the Plaintiff, "that King *Henry* was then King in Possession, and it behoves that the Realm should have a King, and that the
" Laws

“ Laws should be kept and maintain’d ; and therefore tho he was in only by
 “ Usurpation, nevertheless every judicial Act done by him, concerning Royal
 “ Jurisdiction, shall hold good, and bind the King *de jure* when he returns, &c.
 “ So likewise a Charter of Pardon of Felony, and Licences of Mortmain shall
 “ be good, and also the King that now is shall have the Advantage of every
 “ Forfeiture made to the said King Henry, &c.” And mark this farther, it is
 there also held, “ that a Man shall be arraign’d for Treason done against the
 “ said King Henry in compassing his Death ; and the Reason is very remark-
 “ able, because the said King indeed was not merely an Usurper, for the Crown was
 “ intail’d upon him by Parliament ; and this being not at all contradicted by
 “ the Court, is still taken for Law.” And upon this Report, and not only upon
 the Statute of the 11th of Henry VII. did my Lord Coke found his Opinion I
 now mention’d, That a King *de facto* was within the Statute of the 25th of
 Edward III. And tho now it is true, that the farther arguing of this Case of
 Bagot was adjourn’d to a farther day, when the Justices did not argue, but the
 Serjeants and Apprentices at Law (that is the Barristers, as we now call them)
 yet it seems to have been allow’d by the whole Court, that if King Edward
 who was then King, had made his Charter before he was declar’d so, it should
 be void at that time ; for every one who shall make a Charter of Pardon, ought
 to be King in Deed, at the time of the making thereof.

M. Pray, Sir, give me leave to reply to what you have now said against my
 first two Arguments, before you go on to answer the rest ; for I confess the
 Authorities you bring seem so express against me, that if I cannot take them off,
 there will be no further need for answering the rest. I will not therefore deny,
 but that all publick Acts and Proceedings at Law, which are for the publick
 good and safety of the Kingdom, do hold good tho made under Usurpers, and
 that for this Reason ; because such Acts being for the publick Benefit, it is
 to be suppos’d that the King *de Jure* did give his tacit consent to them : for
 (as it is well observ’d, in the Case you have now cited) it behoves the Realm
 should have a King (that is, some Civil Government) and that the Laws should
 be kept and maintain’d ; but then those Laws can extend only to such things as
 are for the publick good, and do not tend to the disinheriting the King *de Jure*,
 or barring him or his Heirs of their Right, as did that Act of the 7th of Henry
 IV. whereby the Crown was intail’d upon himself and his Sons, which was de-
 clar’d to be void by the 39th of Henry VI. So likewise this Act is void for the
 same Reason, since it would give a Right to the Subjects to defend the King for
 the time being, tho an Usurper, against the true and lawful King, who would be
 thereby not only defeated of his Right himself, but also his right Heirs would
 be so too ; which would be directly contrary not only to the Intent of the said
 Statutes of the 39th of Hen. VI. and 1st of Edw. IV. just now mention’d, but
 also to the Act of Recognition of King James I’s Title.

And therefore I must still maintain that my Lord Coke is mistaken in suppo-
 sing a King *de Facto* to be within the Intent of the Statute of the 25th of Edw. III.
 for sure it would seem a very odd question for any one to ask touching the Laws
 that are made in any settled Monarchy for the defence of the King’s Person,
 Crown and Dignity, who is meant by the King in those Laws ; whether
 the Lawful and Rightful King of that Realm, or any one that gets into
 the Possession of the Throne, tho he be not a Rightful King but an Usurper.

So likewise as to that Clause in this Statute, which makes it Treason to con-
 spire the Death of the King’s eldest Son and Heir, it could be never intended
 for the Son of a King *de Facto*, since that would be to own him for right Heir
 of the Crown for ever, and thereby intail it upon his Family, to the prejudice
 of the right Heir of the King *de Jure* ; and therefore, tho I grant some of the
 Judges and Lawyers held the Law to be so as you have cited it in Bagot’s Case ;
 and that a King *de Facto* may enjoy those Prerogatives in some respects, yet can-
 not this be extended to the prejudice of the King *de Jure*, and his Right Heirs.
 And tho I also grant that divers Acts of Parliament made by Kings *de Facto*,
 have for the most part held good without being confirm’d by any subsequent
 Statute of the King *de Jure*, yet have they been also repeal’d sometimes ; merely
 because made whilst the King *de Jure* was alive, as I shall prove more at large by
 and by.

F. I shall also take the boldness to reply to these Answers of yours, before I proceed to answer the rest of your Arguments. In the first place, let me tell you that this Notion of a tacit Consent in the King *de Jure*, suppos'd to be given to all Statutes made for the publick good, is to serve upon all occasions, when those of your Party cannot tell how otherwise to answer the Arguments that are brought against them; and you may as well tell me that they do also give their tacit Consents to all other Acts that Usurpers may do: and I may as well suppose that Queen *Elizabeth* the Wife of *Henry VII.* the lawful Heiress of the Crown, did in the Person of her Husband give her tacit Consent that this Act of the 11th of *Henry VII.* should hold good for ever, since it is so much for the publick Good and Peace of the Nation; "That the Statute declares it" should be against Law, Reason, and good Conscience, that Subjects should "suffer for fighting for the King for the time being." But I very much wonder if this suppos'd tacit Consent were given to all Acts of Parliament by the Kings *de Jure*, why upon their return to the Government, they did not also express this Consent by confirming all the Acts made by their Predecessors the Kings *de Facto*, or else declare them void: but since they neither did the one nor the other, it is plain it was because even they themselves look'd upon it as needless.

Nor is your Reason at all satisfactory, why a King *de Facto* cannot be intended by the Statute of the 25th of *Edward III.* because that maketh it Treason to conspire the Death of the King's eldest Son and Heir, which say you can only be meant of the eldest Son of a King *de Jure*; which is to beg the Question: for tho it is true, this Clause in the Act was intended for the preservation of the King's eldest Son, yet it doth no where determine that this must be the eldest Son of a King *de Jure*: for tho I own this Clause was made to preserve the Crown in the Right Line from Father to Son, yet does it make no difference between the Son and Heir of a King *de Facto*, and one *de Jure*; nor have you yet answer'd the Authorities I have brought from the Acts of Attainder of those Lords, who conspired against the three Kings of the House of *Lancaster*, which stand unreversed unto this day; and which also confirm the Opinion given in *Bagot's Case*, where it is said expressly, That a Man may be arraign'd for Treason committed against the King *de Facto*, by the King *de Jure*. And therefore I think my Lord *Coke* may very well be justified in his Opinion, notwithstanding the question you put, whether the Statute could mean him who is lawful and rightful King, or any other who gets into possession of the Throne. Now this seems to me no such odd Question: for when the Law only mentions the King, and the Law-makers certainly knew that Kings without an Hereditary Right had often ascended the Throne; if they had intended to except all such Usurpers, they should have expressly said so. But indeed that distinction of a King *de Facto*, and a King *de Jure*, was not known till many Years after, being first heard of in the Reign of *Edward IV.* for a King *de Facto* (as the late Chief Justice rightly asserts) is Signior *Le Roy* within that Statute, and there is no other King but he whilst he continues so. For King signifies that Person who has the supreme Government in the Nation; and a King *de Jure*, is he who should have the Government, but has it not; that is, who of right should be King, but is not: and the Statute of Treason tells us what is Treason against him who is King, not against him who should be, but is not King: and Reason good it should be so; for it is not merely a legal Title by descent, but a legal investiture, and recognition by Parliament, that makes a legal King, or a King in Law, as it makes a legal Magistrate; and then all Kings *de Facto*, who are plac'd in the Throne by a legal Authority, and with all legal and acustom'd Ceremonies, are legal Kings; and as such, may require a legal Allegiance: so that all those hard words in the Statute of the first of *Edward IV.* that call those Kings of the House of *Lancaster*, Kings in Deed, and not of Right, or pretended Kings, mean no more than this, that they were Kings for the time being, and according to the Laws which had made them so, tho not according to that Hereditary Right of Succession which those Statutes require. If you have any thing to reply to this, tell me, or else I will proceed to answer your two other Arguments.

M. I will not at present say more to this, and therefore you may proceed.

F. Your two next Arguments are from the Attainders of *Richard III.* and his principal Assistants, which were by Act of Parliament. As to that Prince him-

self, as also his Adherents; the Attainders of Kings *de facto*, and their Assistants in After-Parliaments, do not prove that Subjects cannot be guilty of Treason against a King in possession. Nor does the Statute of Treason relate to a King *de jure* only, for that Statute was not made to secure Princes Titles, but the Quiet of their Government whilst they sat upon the Throne: for tho a King, if he be an Usurper, whenever the rightful King regains the Possession of his Throne, if he were a Subject before, may be attainted of Treason for his Usurpation, as was *Richard III.* for Treason against his own Nephew King *Edward V.* yet this does no way prove that *Richard III.* was no true King during his Usurpation, but only shews the Parliament's Abhorrence of his Treason; and to deter others from falling into the like, attainted him and several of his Accomplices who had assisted him in his said Usurpation. For that they were not barely attainted for defending King *Richard's* Title, appears from this, that the Earl of *Surrey*, Son to the Duke of *Norfolk*, and divers other Noblemen and Gentlemen who fought for King *Richard* at *Bosworth-Field*, were never attainted at all. But as for the Pardon that you say passed in that Parliament of the 1st of *Henry VII.* you are very much mistaken in the purport of it; for if you please to look upon it again, you will find that it

Vid. 1 H. 7.
cap. 6.

"was not a general Pardon for the common People, who had fought on the behalf of *Richard III.* but of all those who had come over with *Henry VII.* himself, or who were with him in the Field against *Richard III.* for all manner of Murders, Spoils, and Trespasses committed by them, in taking part with King *Henry* against his Enemies." So that you see the assisting of a King *de facto* was not only justifiable, but those that had fought against him, thought themselves not safe till they had their Pardon.

Nay, farther, that Attainders passed in Parliament are no proof that the Princes against whom they were passed were not lawful King, appears from hence, That when *Edward IV.* was driven out of the Kingdom, and dispossessed of the Throne, the next Parliament under *Henry VI.* passed an Act of Attainder against him and his Adherents. But as for the Attainder of *Henry VI.* you are very much mistaken to suppose, that it was for any Treason committed against *Edward IV.* but it was for Breach of the Agreement made with his Father the Duke of *York*, and in making war again upon him; for had he not done this, he had continued lawful King during his Life by the Duke of *York's* own Consent. For in the Parliament-Roll you your self have already cited, it is thus expressed: "That considering the Possession of the

Rot. Parl.
Edw. 4. 39 H.
6. n. 18.

"said *Henry VI.* and that he had before this time been named, taken, and reputed King of *England*, and *France*, and Lord of *Ireland*; the said Duke is content, agreeth, and consenteth, that he be had, reputed, and taken for King of *England*, and of *France*, with the Royal Estate, Dignity, and Preheminence belonging thereto, and Lord of *Ireland*, during his Life natural; and for that time the said Duke, without hurt or prejudice of his said Right and Title, shall take, worship, and honour him for his Sovereign Lord." So that you see that by the Judgment of the Parliament, and by the express Consent of the right Heir of the Crown, a King *de facto* was to be owned by this right Heir for his true and lawful Sovereign, and therefore could not be attainted for detaining the Crown from him, or his Son.

M. I will not dispute this Point any further; but yet, methinks, tho Treason might be committed against the King *de facto* whilst he continues King, yet this is not for any Allegiance due to him, but because such Treason being against the due Order of Government, and the common Peace of the Nation, such Actions are therefore Treason from the presumed or tacit Consent of the King *de jure*.

C. A. p. 58, 59. *F.* I grant indeed that such Acts are against the Order of Government, and very destructive to it, which is the only reason why they are made Treason by Law: and this is as good a reason why the Law should make them Treason against a King *de facto*, as against a King *de jure*, for they are equally against the Order of Government, and destructive to it, whoever is King; and that is the only reason why they made it Treason at all. Now this presumed or tacit Consent of the King *de jure* is a very pretty Notion, and serves you for a great many good turns; it makes Laws, and it makes Treason, and gives Authority to the unauthoritative Acts of a King *de facto*; that is to say (or you say

say nothing) that the presumed Consent of a King *de jure*, invests the King *de facto* at the time with his Authority: for if he hath no Authority of his own, unless what the presumed Consent of the King *de jure* gives him, that cannot make any treasonable Act done against him to be Treason; for it cannot alter the nature of things, nor make a Man guilty of Treason against any Person to whom he owes no Duty of Allegiance. And if the presumed Consent of the King *de jure* can invest the King *de facto* with his Authority, it must transfer the Allegiance of the Subjects too: and then Subjects are as safe in Conscience, as if the King *de jure* were on the Throne, for it seems there is his Authority and tacit Consent, tho not his Person.

But indeed this is all mere trifling; the King *de facto* has Authority, or else none of his Acts of Government can have any; for that which is done by a Person who has no Authority, can lay no Obligation upon us: whence then has he this Authority, since he has no legal Right to the Throne? not sure from the presumed Consent of the King *de jure*, which is Nonsense to suppose; but from the possession of the Throne, to which the Law it self, as well as the Principles of Reason, have annexed the Authority of the Government.

M. I am so far 'of Bishop *Sanderson's* Opinion in his Case concerning taking the Engagement, that when Usurpers or Kings *de facto* have taken upon them the Government, they are obliged to administer it for the common Good and Safety of the People; and as far as that comes to, we are also obliged to live peaceably under them, and to yield Obedience to them in things absolutely necessary for the upholding Civil Society within the Realm; such as are the Defence of the Nation against Foreigners, the Furtherance of publick Justice, the Maintenance of Trade and Commerce, and the like. But sure this is no Argument for transferring our Allegiance from the lawful King and his Heirs whilst they are alive; and therefore I must still suppose that this Statute of the 11th of *Henry VII.* can do no Service to the present Government, because it is virtually repealed by several Statutes. As 1st, By the 28th of *Henry VIII.* concerning the Succession of the Crown, wherein it is expressly provided, that if any of his Children should usurp upon each other, or if any of those to whom he should bequeath the Crown by his last Will, or Letters Patent, should take the Crown in any other manner than what should be thereby limited, such Children or others should be guilty of Treason for so doing. Now it is plain such Treason must only have been committed against the right Heir, and consequently the Person so taking the Crown was not to be looked upon as King *de facto*. It is also virtually repealed by the Statute of *primo Elizab.* by which we are obliged to swear to be true to the Queen, her Heirs, and lawful Successors (*i. e.* those who have a Right to the Crown by Proximity of Blood) as also by the Oath of Supremacy, enacted in the 4th of King *James*, by which we are likewise sworn to bear true Allegiance to his Majesty, his Heirs, and Successors. From which Oaths I argue, (1.) That if we are sworn by Act of Parliament to pay Allegiance to the Heirs of a King *de jure*, who never were in possession, then *à fortiori* to a King *de jure*, who, besides the Legality of his Title, had been actually recognized as Sovereign, and enjoyed an uncontested Administration of the Regal Power. (2.) If our Laws oblige us to swear Subjection to the Heirs, &c. of a rightful Prince, then by undeniable Consequence we are bound not to translate our Allegiance to those who are unjustly set up by the People; for without all question the words *Heirs* and *Lawful Successors* were made use of on purpose to secure the Hereditary Rights of the Monarchy, and to prevent all Usurpations upon the direct Line. And since by virtue of that Statute, which framed the Oath of Allegiance and Supremacy, we are not to acknowledge any pretended Governors, to the Prejudice or Disinheriton of the Heirs of the King *de jure*, then most certainly we ought not to do this in opposition to the King *de jure* himself; so that now we can have no pretence to make Right the necessary Consequence of mere possession of the Crown, any more than in private Estates.

F. In the first place, I agree with you in what you have said, that Kings *de facto* are to be obeyed in all things tending to the publick Good of Society; but then it will also follow, that Allegiance is due to them from that great Law of prosecuting the same publick Good: since it were much better that even

Kings *de jure* should lose their Right, than that a Nation should be involved in a long and cruel War, to the weakning and impoverishing thereof, and to the destruction of so many thousands of ordinary as well as noble Families; as was seen in the long Civil Wars between the Families of *Lancaster* and *York*. So that I cannot but think it would have been much better for this Nation, if that Family had continued to govern us unto this day, rather than that *Edward IV.* should have obtained the Crown, with so great a Destruction of the People of this Nation, and so great Cruelty as was then exercised upon King *Henry VI.* and the Prince his Son, and so many other Persons besides, as you may read in the History of those times.

But I come now to answer the rest of your Arguments, whereby you will prove this Statute of the 11th of *Henry VII.* to be virtually repealed. And here by the way I must tell you Gentlemen of this Opinion, that I cannot but admire your wondrous Sagacity in discovering this Act to be repealed, when my Lord *Coke*, and all the rest of our Lawyers, do still suppose it to be in force. But indeed the reason you give for it is not urged like a Common Lawyer, and therefore I think it will signify little: for tho I grant that an Act of Parliament may be virtually repealed by a subsequent Act, yet it is only in such Cases where they are absolutely contradictory, and inconsistent with each other; but if they are not so, an Act of Parliament can never be said to be virtually repealed. And therefore I shall now show you, that notwithstanding the Statute of *Henry VIII.* and the Oaths of Supremacy and Allegiance you have now mentioned, this Statute may very well continue in force and unrepealed. First, As to the Statute of *Henry VIII.* whereby it was declared Treason for any one of his Children, upon whom the Crown was settled, to usurp upon each other; that part of the Statute, which makes this Treason, was repealed by the 1st of *Edward VI.* and by the 1st of Queen *Mary*. Or admit it had not been so, yet this Clause in the Statute of *Henry VIII.* would have been absolutely void in it self against any such Usurper, when actually possessed of the Crown; since it was held by all the Judges in the Case of *Henry VII.* who at the time of his coming into *England* stood attainted by Act of Parliament, that this Attainder need not be reversed, since Possession of the Crown takes away all precedent Defects.

But as to the Statutes of the 1st of Queen *Elizabeth*, and the 4th of King *James*, by which the Oaths of Allegiance and Supremacy were enacted; I conceive neither of these Oaths can amount to a virtual Repeal of this Act: for tho I grant one end of these Oaths may be to secure the Right of the King's or Queen's Heirs by lineal Descent, yet it will not therefore follow, that a King *de facto*, or for the time being, may not be legally defended in the Throne; for as for that part of the Oath which was taken to King *James* himself, it can hold no longer than whilst he continued King. If therefore the Estates of the Kingdom have adjudged him to have forfeited or abdicated the Crown, the whole Nation ought to take this as to have been legally done, since it was done by the judgment of the highest Authority in the Nation, when King *James* had deserted the Throne. The like I may also say for the other part of the Oath of Allegiance, whereby we are obliged to his Heirs and lawful Successors: for since there has been a Dispute concerning the Succession of the Crown, between the Princess of *Orange* and your Prince of *Wales*, if the Convention, who are the sole proper Judges in this Case, have thought fit, for the Reasons I have already given you at our last Meeting, to declare King *William* and Queen *Mary* the lawful King and Queen of *England*, all the Nation ought to accept them for such, since it was done by the highest Authority at that time extant in the Nation, and the only proper Judges of that Right; and if Disputes about legal Rights (of which certainly that of succeeding to the Crown is of the highest importance) ought to be decided by Law, and not by the Sword (which is not the decision of Civil Authority, but of Force) the Sentence of competent Judges must end the Dispute. And if the Estates of the Realm be not the proper and legal Judges of such Disputes that concern the Right to the Crown, there can be none; and if they be, Subjects must acquiesce in their Judgments, or it is all one as if there had been none: for if Men may pretend Conscience, and adhere to their own private Opinions as sole Judges, the Dispute must end in Blows; which is contrary to the

the Reason and Nature of human Societies, which were instituted to prevent Civil Wars, and to end all Controversies by a legal Judgment without the Sword.

And to let you see farther, that as to the Allegiance of the Subjects it is all one in respect of us who are Subjects, whether the Convention have judged Right or Wrong in this Case: Let us suppose a Person who has only a Pretence, but no true Right to an Estate, should commence a Suit of Law for it, and at last obtain a Verdict of the Jury, and also a Judgment of the Court of King's Bench for his Title; can any Man deny but that the Sheriff is, by virtue of this Verdict and Judgment, obliged to put this Abator into possession of this Estate, notwithstanding he may know of his own knowledge, that the Person who has obtained this Judgment has no true Right to the Estate? Or will any Lawyer doubt whether all the Tenants of the Mannor are not obliged to swear Homage and Fealty to this supposed Lord, if they are required by him so to do? Now tho the true Heir or Owner has the legal Right to the Estate, yet by the supreme Law of all Societies, which refers the Decision of all personal Rights to a legal Authority; he who by a legal Judgment is possessed of it, has the legal Right in the Estate against all other Claims, and legal Authority must defend him in it, and all who will submit to Laws and legal Authority, must acquiesce in it. Ibid. p. 19, 20.

And thus it must be with respect to the Rights of Princes as well as of Subjects: The Right to the Crown has been often disputed, as we all know; and to say that when such Disputes happen, there is no Authority in the Nation to decide them, is to say that Princes have no Right to their Crowns by the Laws of that Nation; for there can be no Civil Rights, of which there neither are nor can be any Civil Judges: for no Man, no not a Prince, can be Judge in his own Cause; and if Princes have no legal Rights, they can lose no legal Rights when they lose their Crowns, and I doubt their natural Rights will affect the Consciences of very few Subjects. Therefore every independent Civil Society, which is not wholly governed by the Sword, must, from the nature of such Societies, and the reason of their Institution, have Authority within it self to decide all Controversies which may arise about the Rights of every Member of that Society, and to preserve it self from falling into a State of War, which is a Dissolution of all Civil Government: and if there ought to be such an Authority in every civilized Nation, when this supreme Authority has given Sentence in such Disputes, this must also determine all the Subjects, and ought likewise to have the same effect upon the contending Princes themselves; and no Right, or pretence of Right, ought to affect the Conscience after such a final Judgment, unless Civil Rights can oblige Subjects to dissolve Civil Governments, and to dispute Civil Rights, not by the Law, but by the Sword; which is to overthrow all Civil Rights, and put an end to the Authority of Laws.

I hope this may serve to shew you how much you are mistaken, to suppose that there can be no King in an Hereditary Monarchy, but the next lineal Heir. And tho I grant no Allegiance can be due or ought to be paid to him who is no King, yet will it not follow, that none can be due to any Prince if he be not the next Heir; for that no Obedience can be due to him who is no King, I readily grant, but yet he may be a legal King in this Kingdom, who is not the next Heir by Blood, as almost half of the Kings of *England* since the Conquest were not, and yet have been always owned and obeyed as legal Kings.

M. I confess what you say would go a great way to satisfy me, could you prove that there was no Difference between the Succession to Crowns and private Inheritances, where I grant that the Judgment of the supreme Court of the Nation, is to determine not only the Possession, but the Right too, in respect of the Person who loses his Estate by an unjust Verdict, or illegal Judgment; whereas it is otherwise in the Title of Crowns, to which Princes have a Right as well by the Laws of God and Nature, as also by the received settled Laws and Customs of the Kingdom concerning the Succession by Descent; which is called, in the 13th of Queen *Elizabeth*, (in the Statute we have so much debated at our last Meeting) the common Laws of this Realm: and it is there declared, that it ought to direct the Right of the Crown of *England*,
and

and it is there made Treason, during the Queen's Life, to affirm the contrary. And this Course of lineal Succession at Common Law was also declared by solemn Judgment in Parliament, in the Case (I have so often urged) of the Duke of *York's* Title to the Crown against *Henry VI.* that it could no way be defeated by Act of Parliament; and therefore I must still tell you, that you go upon a wrong ground, when you suppose that there can be now any Dispute who is rightful King of *England*, since I have often told you, that he can neither abdicate or forfeit his Right to the Crown, and that no Parliament whatever (much less a Convention) could have any power to declare he had abdicated the Government, and that thereby the Throne was become vacant. For tho I grant the Judgment of the Estates of the Kingdom, when legally assembled, ought to be received with great Submission and Respect; yet must it be only in such Matters which they have a legal Cognizance of, and which they are impowered by the Laws and Constitutions of the Kingdom to determine. But their voting him, whom you your self cannot deny to have been their lawful King, to have abdicated the Throne (when indeed he had not) and then not only to declare the Throne vacant, but also to place those therein whom you your self dare not affirm to be the next Heirs by Blood, are things quite out of their Element, and beyond the Sphere of their Authority. And tho I grant that they may sometimes judge concerning the Succession of the Crown, and who is next Heir to it, yet is this only to be understood as far as they judge according to the common Laws of the Succession already laid down at our last Meeting, and not when they go quite contrary to them: and therefore tho I own the Parliament might justly declare *Henry VI.* to be an Usurper, and consequently might be deposed; yet it doth not therefore follow that they had a like Right to declare *Edward IV.* an Usurper, and to pass an Act of Attainder against him, as I confess they did after that Prince had held the Crown for ten years together, since that was beyond their power to enact or declare by the fundamental Constitution of the Government.

F. I am sorry your Answer can afford nothing new, but only the Repetition of the same false Principles and Arguments that have been already so often answered in our former Conversations: for in the first place I have sufficiently proved, that neither the Laws of God nor Nature have ordained any such thing as a lineal Succession of Kings, or any irresistible or unforfeitable Power in them, which they can never fall from, let them act ever so tyrannically. For I think I have sufficiently proved, that not only in absolute Monarchies, but also in limited Kingdoms, where the King has not the whole supreme Power, a King may not only be resisted, but may be also declared to have abdicated or forfeited his Right to govern, in case of any apparent obstinate Violations of the fundamental Constitution, in those great Points that make that Government to differ from a despotick Monarchy; and that if they had not this Right, all their Liberties will signify nothing, and their Lives, Liberties, and Estates would lie wholly at the King's mercy, to be invaded and taken away whenever he pleased. I am forced to repeat this, to remind you of the Reasons upon which those Principles are founded; and therefore you do but fall into your old Mistake, when you affirm, that by the fundamental Constitution of the Government, the great Council of the Nation (which was but the same with our late Convention) had no power to declare the King to have broken the original Contract between him and his People.

Therefore what you say concerning the want of Authority in this great Council to declare the Throne vacant, is altogether precarious, unless you could also prove that it is against the fundamental Constitution so to do; whereas I have so far proved the contrary, that the Throne has been declared vacant no less than eight times since the Conquest, which makes up almost a third part of the Successions of all the Kings and Queens that have reigned since that time. So that if the Custom and Practice of great Councils or Conventions (and those not condemned by any subsequent Statutes) can be the only Rule or Guide for the Consciences of all the Subjects of this Nation, we have certainly had that as solemnly declared now, as in any other great Council or Convention that has been ever held in this Kingdom. But as to what you say concerning the want of Power in those Councils, to declare or recognize who are the right Heirs to the Crown, but not to make them so, is very pleasant; since that

that were all one as if two Men, who contended for an Estate, should bring the matter before the House of Peers, and when that was done, and the Cause solemnly heard by Counsel on both sides, that Party who had lost the Cause, should declare that this Court (though the highest in the Kingdom) had no power to judge in prejudice of himself, who had an undoubted Right to the Estate, which were to give the Lords a power to give Judgment only for one side; and why the other Party, if the Judgment had been given against him, should not have made the like Plea, I cannot understand: so that such a Judgment would be altogether in vain.

Therefore to apply this to our purpose, tho the Parliament, being prevailed upon by the Strength and Faction of the Duke of York, did (as I granted at our last Meeting) declare that his Title could in no wise be defeated; yet Henry the VIth being then in the Throne, they might have certainly given a contrary Judgment if they had pleased, and then I suppose the Title of the House of York might have been so defeated, as that the Nation had never been troubled with it again: and so also, when by the Power of Edward the IVth, a Parliament met, and declared him to be lawful King from the time of his Father's Death, yet when the said King was driven out of the Kingdom by the Earl of Warwick, and King Henry the VIth restored to the Throne, a Parliament was summoned in the 49th of this King, wherein Edward the IVth was declared an Usurper, and himself attainted; and to which Parliament the Duke of Clarence, Brother to King Edward the IVth, is first summoned, as well as the Archbishop of Canterbury, with all the other Bishops, Temporal Lords, and Judges (of whom Littleton, the Author of the Book of Tenures, was one:) so likewise upon King Edward's Recovery of the Crown the year following, King Henry was again deposed, and a Parliament called, wherein all the Dukes, Earls, and Barons, with the Archbishops of Canterbury and York, and most of the rest of the Bishops, swore to Prince Edward, after called Edward the Vth, as right Heir to the Crown. Rot. Claus.
49 H. 6. m. 6.
Ib. 11 Edw. 4.
m. 1.

Now I desire to know what other Law or Rule there was then for the Subjects Allegiance, but the solemn Judgment or Declaration of the Estates of the Kingdom assembled in Parliament, since their Acts and Judgments were in this Dispute directly contradictory to each other: so that it is evident from the constant Practice of those times, that the King *de facto* was always owned as lawful Sovereign, and had Allegiance still paid him by all the People of this Kingdom, except those who being the Heads of one or the other Party, were either attainted, or forced to fly the Kingdom.

But as for all others, tho different and contrary Oaths of Allegiance were imposed upon the People, sometimes by the one, and sometimes by the other of those Kings, according as they got possession of the Throne; yet I can nowhere find, that ever any body suffered for barely swearing Allegiance to the King *then in being*: for it was always taken for Law, that Allegiance was due to the King *de facto*, since ordinary Subjects are not supposed to understand the legal Right or Justice of the King's Title.

M. I must still say, that there was some colour for the Peoples thus acting (as you say they did) during the Contest for the Crown between the two Families of York and Lancaster, when I grant it was somewhat a difficult matter to judge which of the two had the best Right to the Crown, by reason that the House of Lancaster had held it for three Descents; as also from the Speciousness of their Title, since it was founded upon a pretended Claim by Right of Blood, upon supposing that Edmund, surnamed Crouch-back (who was one of the Ancestors of this House of Lancaster) was the eldest Son to Henry the Third; which had it been true, would have given Henry the Fourth a good Right to the Crown, not only against Richard the Second, but his own Grandfather Edward the Third likewise (had he been then alive:) and this Descent falling out long before the Memory of any Man then living, who could confute the Falsity of this pretended Pedegree? The People of England might very well be excused for owning an Usurper, and paying Allegiance to him, since they did not know but his Claim might have been right, especially since it was approved of in full Parliament without any Contradiction, as I have already shewn you at our last Meeting.

But

But what is all this to the matter now in Debate between us, when the Lineal Succession of the Crown has been so often declared to be the only means of acquiring a just Title to it; and every one knows very well who was owned for lawful King of *England* within these three Months, and also who was prayed for in all our Churches as his Son and Heir apparent? and therefore I must still tell you, that your Parallel between those Kings *de facto* of the House of *Lancaster*, and those Princes whom the Convention have now voted to fill the Throne, does not at all agree, since every Subject of this Kingdom, who has but sense enough to go to Market, can very well tell (if he will deal sincerely) to whom his Allegiance is due.

F. As to what you have now said, it is no more than a Repetition of what you have already urged to evade the Force of these clear Authorities; but indeed it was all one, when a Prince had been once recognized for lawful King by Act of Parliament, whether the People knew his Title not to be good by Right of Blood or not: And this I have plainly proved to you from the Instance of *Richard* the Third, who tho both his elder Brother's Children were then alive, and the eldest of them had been proclaimed King, and also owned for such by himself, and whose Title he had also sworn to maintain in his Brother King *Edward*'s life-time, as appears by the Clause-Roll of the 11th of *Edward* the Fourth; yet when he had once deposed him, and had called a Parliament which recognized his Title, his Acts and judicial Proceedings stand good at this day: and tho he himself was attainted, and declared a Tyrant and an Usurper, yet all the Subjects who acted under his Authority, and had taken an Oath of Allegiance to him, never needed an Act of Indemnity for so doing; whereas those that came over with *Henry* the VIIth were fain to have an Act of Pardon passed to indemnify them for fighting against *Richard* the IIIrd (as I have now shewed you.) And tho this Parliament of the first of *Henry* the VIIth agreed to repeal divers Acts which the King found fault with; yet as for all other Statutes, made in the Reign of King *Richard* the IIIrd (which have not been since repealed) they are still in force without any Confirmation. Likewise when *Henry* the VIIth had prevailed over *Richard* the IIIrd, and that he was slain in the Field, tho all the Nation very well knew that *Henry* the VIIth could not be Heir of the House of *Lancaster*, because his Mother was then alive, and had never formally given up her Right, if she had any; as certainly she could have none, as being descended from *John* Earl of *Somerset*, who was base Son to *John* of *Gaunt* Duke of *Lancaster*, by *Catherine* Swinford, whilst his Wife was alive; and tho I grant after his Marriage with the said *Catherine*, the Children born of that Bed were made Legitimate by Act of Parliament in the 20th of *Richard* the Second, yet that Legitimation only respects such private Privileges and Inheritances which they might enjoy or succeed to as Subjects, and had no respect to the Crown; the Succession of which they were expressly declared incapable of by that very Act of Legitimation, still to be seen upon the Parliament-Roll. But for all this, when *Henry* the Seventh had called a Parliament, and was therein recognized for their lawful Sovereign, and that the Crown was settled by Statute on him and the Heirs of his Body (without any mention of the Princess *Elizabeth*, who ought to have been Queen by Right of Blood) yet none of the Subjects of this Kingdom (as I can find) ever scrupled to swear Allegiance to him, before ever he married that Princess; tho they as well knew that he could have no Right by Blood, as you can suppose that the People at this day can know whether King *James* has abdicated or forfeited the Crown or not, or whether your Prince of *Wales* be his true and lawful Son: for since they are both nice and difficult Points, and have been determined by the Convention, the Supreme Judges in this case, in favour of their present Majesties, and that they also recognized their Title after they became a Parliament; I can see no manner of reason why all the Subjects of this Kingdom may not as well justify their taking this new Oath of Allegiance to them, notwithstanding their former Oath of Allegiance to King *James* and his right Heirs, as well as the People of *England* could justify their taking an Oath of Allegiance to *Henry* the Seventh, notwithstanding their former Oath to *Edward* the Fourth and his right Heirs, before ever *Henry* the Seventh had married the Princess *Elizabeth*, the Heiress of the Crown; especially since this Act of the 11th of *Henry* the Seventh (which we are now disputing about)

was

Mem. 1.

Vid. the Act
printed at large
in Buck's Hist.

was made expressly to secure and indemnify all those who should attend upon the King for the time being, and do him true and faithful service of Allegiance, &c. And therefore it lies upon you still to prove, that this Statute is either expired, or else void in it self; otherwise (besides the constant Practice of former times) we have here an express Act of Parliament declaring it every Man's Duty to pay Allegiance to the King for the time being, and then certainly he is as much obliged to swear it too.

M. I doubt not but I shall prove to you, that this Statute expired with Henry the Seventh, from a Clause in the Act it self; for if you please to read immediately after those words you have now cited, "That all those who do the King for the time being true and lawful Allegiance, &c. [it follows thus] "shall be secured from all manner of Forfeitures and Molestations relating to their Persons or Estates; (*but mark*) provided always that no Person or Persons shall take any Benefit or Advantage by this Act, which shall hereafter decline from his or their said Allegiance." Now we know a Proviso is an Exception or Restraint upon the Latitude and Comprehensiveness of the Law, and that all Statutes are perfectly null so far as the Proviso reaches. Having premised this, I shall endeavour to prove that this Act was designed only for the Security of that Reign in which it was made, and cannot be stretched any farther. To make this appear, let us now suppose a Competition between the King *de jure*, and Henry the Seventh (that is, one *de facto*) and that the Subject engages for the latter; in this case, if the King *de facto* prevail, there is no need of the Assistance of this Statute: for we cannot imagine any Prince could be so impolitick as to punish those who have ventured their All to maintain him in his Government. This, besides the Ingratitude of the Action, would proclaim the Injustice of his Cause, and would serve only to ruin his Interest.

A. 11 H. 7.
p. 5, 6.

F. Notwithstanding this Objection you have now made, I doubt not but this Clause will bear a very fair and legal Interpretation, and that not in respect of the Allegiance that might be due to the King *de facto*, but to the King *de jure*; since if it were not for the Indemnity provided by this Statute, the King *de facto* would have been obliged to have punished them for opposing their lawful Prince.

M. This is easily answered, for pray do Kings *de facto* always perform that which the Law requires? if so, they never would have been Kings *de facto*, since they could not make themselves Masters of the Sovereign Power without dispossessing those who are supposed the right Owners of it. Secondly, the Possessor would not so much as seem obliged to punish his Adherents upon a competition, except he owned himself to be no more than an unjust Usurper: but we have neither example nor reason to expect such singular Concessions as these; for no Usurper will own himself in the wrong, so long as he intends to enjoy the Advantages of his Injustice. Upon supposition therefore, that the Victory had fallen on the side of a King *de facto*, the Act would be wholly superfluous.

F. But why may we not also suppose that this Clause was inserted, not only to secure those who had assisted the King *de facto* against your King *de jure*, but also to debar all those who had fallen from their Allegiance to the King *de facto*, from receiving any Benefit by this Act, if ever they should plead it in their own Justification, after the King *de jure* had prevailed, and was again settled in the Throne?

M. You may take it in this sense if you please, but if you do, it will not at all mend the matter; for tho' those that stood by the King *de facto* will have great occasion for an Act of Indemnity, yet this Act will be as helpless to them now, as it was needless before; for either they must submit to the King *de jure*, or not: if they do not submit, it is easy to imagine the Consequences, how a victorious and irresistible Prince will treat the obstinate and rebellious Opposers of his just Title; if they do submit (as of necessity they must) then they can claim no manner of Privilege and Indemnity from this Act: for they cannot come into the Party of the King *de jure*, without deserting that *de facto*; i. e. without declining their Allegiance to him, who was King when this Statute was made: by declining which Allegiance, the Proviso expressly excludes them from all manner of Benefit or Advantage by

Ibid. p. 6.

this Act. In this condition the Law would have left the *de facto* Party, if the Sovereignty had been disputed between *Henry* the Seventh and the House of *York*, and that the Prince *de jure* of the House of *York* had been successful: From whence it is undeniably plain, that neither the Design nor Words of this Statute can be drawn to such a monstrous Construction, as to enact bare Possession to be a good Title, and make Might and Right the same thing. The only Design of this Parliament was to continue the Crown to *Henry* the Seventh during his life-time, which both by the Body and Proviso of the Act was as effectually done as in them lay, for divers Reasons that might then prevail with the two Houses to consent to a temporary Alteration of the Succession to the Crown: such as these, That tho *Henry* the Seventh had no just Title in his own Right, yet in the Right of his Wife he had, which he did no way disavow by this Act. And you must also remember, that at this time *Henry* the Seventh had several Children by his Queen, *viz.* Prince *Arthur*, *Henry*, &c. So that now the contending Families of *York* and *Lancaster* being thus happily united, there was no reason to fear, that a Security (tho an unusual one) to the present Possessor, could be prejudicial to the right Line, especially since the Force of that Act was confined to the Reign of that Prince, as has been already proved.

F. You may fancy if you please, that you have proved this Act to be expired, but I think if you better consider of it, you will find your self mistaken; for tho I may very well suppose that the King and Parliament, to deter Men from falling from their Allegiance to the King for the time being, might insert this Clause, upon a supposition that the next King, whoever he was, whether by Right of Blood, or only *de facto*, would, out of a generous Aversion to Traitors and Deserters, hinder them by virtue of this Clause from enjoying any Benefit by this Act; yet I shall not longer insist upon't, whether it be insignificant or not, and therefore will at present grant it to be so: but what then? Will a void Clause vitiate or render expired an Act of Parliament which is made indefinitely, without fixing it to any Time or Person? The words in the Act are, *the King for the time being*; which must certainly extend to any other King, as well as *Henry* the Seventh: for I suppose that an Act of Parliament and a Deed agree in this, that an unnecessary Clause can by no means render the whole void.

But as for what you say in relation to this Act's being a Security for the Title of the Queen and her Children (whom you suppose to be the right Heirs of the Crown) this rather serves to strengthen the Act than otherwise; for if this King had a good Title in her Right, then it may be also very well supposed that she gave her Assent to this Act in the Person of her Husband, and that not for the benefit, but to the prejudice of her own Issue: since if after her Death (which happened some years before his) her Son Prince *Henry* of *Wales* had set up his present Title to the Crown in the Right of his Mother, and so would have dethroned his Father as an Usurper, I suppose no reasonable Man will deny but that this Act would have indemnified all those who had taken up Arms in defence of King *Henry* the Seventh against his Son, tho (in your sense) King *de jure*: and if it would justify the Subjects then, I cannot see why it may not do the same thing now in their swearing Allegiance, nay, fighting for the King in possession, against him whom we will for the present suppose to be King *de jure*.

M. Well, however I think I can prove that this Act was no more than temporary, from the Judgment of the Judges in the Case of *John* Duke of *Northumberland*; who when he was tried for Treason, for leading an Army against Queen *Mary*, to settle the Lady *Jane* *Gray* in the Throne, desired to be informed by the Judges, whether a Man acting by the Authority of the Great Seal, and the Order of the Privy Council (or Prince's Council, as *Stow* and *Heylin* word it) could become thereby guilty of Treason: To which all the Judges answered, that the Great Seal of one that was not lawful Queen, could give no Authority or Indemnity to those that acted by such a Warrant; upon which the Duke submitted: tho without question he did not want Lawyers to enforce his Plea with this Statute likewise, if his Cause would have borne it. From whence I infer against Sir *Edward* *Coke*, That Treason lies against a King *de jure*, tho out of possession; for it is plain by all our Historians, that Queen

Mary

Mary was so far from being possessed of the Crown when the Duke of *Northumberland* acted against her, that the Lady *Jane* was not only proclaimed Queen in *London*, and most of all the Cities and great Towns in *England*, but the Tower of *London*, with all the Forts and Naval Forces, were under her Command; and she had also Allegiance sworn to her by the Privy Council, and by the Lord Mayor and Aldermen: and she had also the Seals in her power, by which all Patents and Commissions were granted and issued in her Name. And if all this be not sufficient to constitute her Queen *de facto*, according to this Statute of *Henry* the Seventh, I know not what was.

F. Yet I can tell you what was yet wanting, which because she had not, she was certainly neither Queen *de jure*, nor *de facto*, and that was a solemn Coronation and Recognition of her Right by Parliament; which legal Investiture since she never had, she was not the Queen for the time being, and consequently not intended within this Statute of the 11th of *Henry* the Seventh: for tho it is true, she was appointed Successor of the Crown by the Letters Patent of King *Edward* the Sixth, yet since she could not claim by Right of Blood, there being so many before her, all the Kingdom looked upon it as an Usurpation, and an Artifice of the Duke of *Northumberland* (whose Son she had married) to get the Government of the Kingdom into his sole power: so that it was no wonder if the greater part of the People were so averse to her Title, and that those of the Nobility who took her part, so quickly revolted from her, when once the fear they were in of the Duke of *Northumberland*'s Power was removed; for had this Bequest of the Crown to the Lady *Jane* held good, this Kingdom, instead of being Hereditary, would have become wholly Testamentary, and disposabable by the last Will or Letters Patent of the King or Queen for the time being, without the Consent of the Great Council of the Nation: which is contrary not only to the then received Laws of Succession, but also to the antient Constitution of the Kingdom, as well before as after the Conquest.

But notwithstanding all this, I doubt not if the Lady *Jane* had so far prevailed against Queen *Mary*, as to have been able to call a Parliament, and to have had her Title owned and recognized therein, as it was in the Case of *Richard* the Third and *Henry* the Seventh, but that she would have been true and lawful Queen, according to the Intent of the Statute we are now discouraging of; and then the Duke of *Northumberland* must likewise (if he had fair play) have been indemnified for taking up Arms in her Defence against Queen *Mary*, since Queen *Jane* would have been then within the Letter of this Statute, as much as King *Henry* the Seventh.

M. You must pardon me if I cannot be of your Opinion in this matter, since if the bare Coronation and Recognition by Parliament could confer a legal Right to the Crown upon one who had no Hereditary Right to it before, the Consequence of it would be, that the Crown would be so far from being Elective (as you suppose it to have antiently been) that it would be in the power of every bold Usurper or Rebel, who had but the Confidence to call himself King, to gain a legal Title to be so, according to your Principles: and then if *Oliver Cromwell* could have found a Party strong enough in the Army to have declared him King, and had called a Parliament in his own Name, who had recognized him for their lawful Sovereign, he would then have had as much Right to our Allegiance as King *Charles* the Second; which certainly was not only contrary to the Settlement of the Crown upon King *Henry* the Seventh, and the Heirs of his Body, but also to that solemn Recognition of King *James* the First's Title, as lineally descended as right Heir to the said King *Henry*, which I insisted on at our last Meeting.

And therefore if you will have my sense of this Act, it is either expired (for the Reasons I have already given) or else was void *ab initio*; since it is not only contrary to the settled Course of Succession of the Crown according to the Laws of lineal Descent for divers hundred years past, but also to those of Justice and right Reason, for an Usurper not only to seize the Throne by force, but if he can once get himself solemnly crowned, and then recognized by an Act of Parliament of his own calling (which you your self cannot deny but to have been ever too obsequious to the Will and Power of Usurpers, as appears by those Instances you have given me in *Henry* the Fourth, *Henry* the Sixth, and

Richard III.) the Consequence will then be, that the whole Nation would not be only bound to swear Allegiance to him, but would be also oblig'd by this Act to defend him in his Tyranny and Usurpation to the utmost of their Power, and it would also indemnify them for so doing; which would be to establish Iniquity by a Law, and would destroy all the settled Foundations of Right and Wrong, which I affirm God himself is not able to alter, without departing from those great Attributes of Immutability and Justice, so essential to his Divine Nature.

F. It will not be very difficult to reply to these Arguments, since they are grounded on such false Principles as are already answer'd. As first, that this Kingdom is by the fundamental Constitution of it an Hereditary Monarchy, and that consequently none but he who has a Right by Inheritance can require our Allegiance. But pray tell me where you can find this fundamental Constitution? For I think I have sufficiently prov'd that there never was any such thing known in *England*, till between four and five hundred Years since, when King *Edward I.* succeeded to his Father *Henry III.* without any Bequest of the Crown by his Testament, and before any Election or Coronation, he being then in the Holy-Land. But suppose it now to be an Hereditary Monarchy, it doth not therefore follow, that the Monarchy should continue always in such a Family, for that may fail, or may be chang'd by Conquest or Usurpation, as has often been, and the Constitution continue. So that the most that can be said, is, that when any particular Family, by the Providence of God, and the Consent and Submission of the People, is plac'd in the Throne, of Right the Crown ought to descend to the Heir of that Family: but suppose it does not, must we pay Allegiance to no other Person, tho' possessed of the Throne? Pray, Sir, shew me that fundamental Constitution; for its being an Hereditary Monarchy does not prove it, and according to the Judgment of the best Lawyers, the Laws of the Land require the contrary, *viz.* that we must pay our Allegiance to him who is actually King, not to him who ought to have been King, but is not: and to think to confute this, by pretending this fundamental Constitution of an Hereditary Monarchy, is to take that for granted, which is still to be prov'd.

And therefore I am not at all frightened at the dreadful Consequences which you suppose must follow if this Statute of *Henry VII.* should be Law, *viz.* that it would be in the power of every Rebel and Usurper who could get himself crown'd, and then own'd to be King by a Parliament of his own calling, to have a legal Right to our Allegiance; and that *Cromwell*, if he could have got himself once crown'd, and recogniz'd, might have been defended in his unjust Usurpation against King *Charles II.* But admit this to have been so; yet it is still to be understood, that at this Coronation he had taken the Oath antiently taken by our Kings, and that the Parliament he had summon'd to recognize his Title, had consisted of the antient Lords and Commons, consisting of Knights, Citizens and Burgesses, which never was observ'd in any of those Mock-Parliaments which *Cromwell* call'd: Had all these Conditions been observ'd, I believe he would have been as legal a King within this Statute of *Henry VII.* as he himself ever was before he married with the Princess *Elizabeth*, which was not till near half a Year after he had the Crown settled upon him by Act of Parliament. So that tho' upon every Translation of the Crown from one Family to another, the first Prince of that Family could have no Hereditary Right to it, yet we find such Princes to this day taken for lawful Kings. Thus your *William the Conqueror*, King *Henry IV.* and King *Henry VII.* are each of them look'd upon as true and lawful Kings (according to our Constitution) as if they had been right Heirs of the Crown by lineal Descent; and tho' you may say, that as to *William I.* he had a good right by Conquest, that is only *gratis dictum*, since I have already prov'd that he could be really no Conqueror. And if the *English Saxon* Monarchy was Hereditary before the Conquest (as the Gentlemen of your opinion suppose) he could be no other than a Usurper upon *Edgar Atheling*, the right Heir of the Crown by Blood. And as for *Henry IV.* and *Henry VII.* tho' they both pretended a feign'd Title to the Crown as Heirs by Blood, yet it is plain by the very Acts of Recognition I have cited, that they durst not insist upon that Title; since I have already prov'd there is no such thing mention'd in that Act of Parliament, wherein the Estates of the Kingdom unanimously

unanimously agreed that *Henry Duke of Lancaster* should reign over them; nor yet in the subsequent Act, whereby the Crown was intail'd upon himself, and his four Sons successively. So likewise in the Statute of the first of *Henry VII.* it is only drawn in general Terms; "declaring that the Inheritance of the Crown of *England*, &c. shall rest, remain, and abide in the Person of King *Henry VII.* and the Heirs of his Body lawfully coming, &c." Nor is there indeed any Breach made upon this Statute (as you suppose) nor yet upon the Act of Recognition of King *James*, which you so much insist upon; since the Crown is certainly settled upon two Princes, who are not only lineally descended from them, but who are also to be look'd upon as right Heirs unto them, since the Great Council of the Nation, who are the supreme Judges, have declar'd them to be so.

But as for the rest of your Speech, whereby you would prove that this Act must needs be void, because contrary to the Laws of Justice and right Reason; this also depends upon your former Error, in supposing that Princes have a Divine or Natural Right to their Crowns antecedent to the municipal Laws of their respective Kingdoms, which is already sufficiently confuted. So that tho I grant it is not in the power of God himself to alter the natural Foundations of Right and Wrong, Just and Unjust; yet it is likewise as certain that the Civil Rights of Princes, as well as those of Subjects, can no ways be accounted for according to those Natural Laws; since all Civil Property, as well in Crowns as other Possessions, must depend upon the particular Laws and Constitutions of each Kingdom and Nation, as I have already sufficiently made out.

And therefore tho I grant that all legal Authority ought still to go according to just or rightful Titles, yet since God makes no Kings at this day, but those who are made Kings by some human Acts, and have a legal Right to Kingship by some human Laws; how can you prove from hence, that in *England* none can have a legal Right to govern, but those who have the rightful Title of a lineal Succession? For if the Title alone does not confer the Authority, but that the Law says a legal Investiture by Coronation and Recognition by Parliament shall also confer it, it is evident that an Hereditary Title, and a Legal Authority, may be separated, and yet the Authority continue Legal still: for Legal Authority must be convey'd in such manner, and by such forms as the Law has prescrib'd, or appoints to that purpose, for there is no other way of conveying it; and then that Authority which is so given in form of Law (and that only) is the legal Authority. If then the Estates of the Realm, who are the only proper Judges of such Disputes, have adjudg'd the Crown to one, whom we will at present suppose to have no antecedent legal Title to it, yet he thereby becomes legally possessed, not only of the external Force and Power, but of the legal Authority of the Government also; and therefore he may challenge as his due, all legal Obedience, (which is the true notion of Allegiance, for nothing more than legal Obedience can be due to a mere legal Authority:) so that because he is invested with the legal Authority, the Crown is his legal Property, against all other Claims, and his Subjects must defend him in it; as the legal Properties of private Persons being once determin'd by Judgments of inferior Courts of Law, are also to be defended by the Civil Power against the force of him who perhaps may have the better Title to the Estate by Right of Blood. And if God makes Kings by human Acts, I hope it is no injustice in God to make him a King, whom the Law makes a King, and to enjoin our Obedience to a legal King; which legal Authority may be said to be annex'd to the legal Title, while there is no legal Judgment against it: which was not the Case of Queen *Mary*, and the Lady *Jane* her Competitor; nor yet of King *Charles II.* and *Oliver Cromwell*: since neither the one or the other were ever crown'd or acknowledg'd as lawful Queen, or King by Parliament, and therefore could obtain no legal Title against the right Heirs. But on the other side, when one is solemnly declar'd King or Queen, being crown'd or plac'd on the Throne by the Estates of the Realm, he is then legal King, and has the legal Authority, as the Royal Estate and Dignity was own'd to be in *Henry VI.* when the Duke of *York* claim'd the Right to the Crown.

M. I am not yet convinc'd I am mistaken in this matter; for waving at present any natural or divine Rights of Princes, I think this Act of *Henry VII.* (if suppos'd to be now in force) is no ways to be reconcil'd with the former declar'd Laws

E. L. R. p.
25, 26.

Laws and Statutes of the Kingdom ; much less can this last pretended Act of Recognition of King *William* and Queen *Mary* reverse the Statute of Recognition made to King *James I.* whereby the Parliament does not only own him for true and lawful King by descent from *Henry VII.* and *Edward IV.* but also engage themselves and their Posterities to his Majesty, and his Royal Progeny for ever. And they do likewise conclude in these words, (I have not yet mention'd) " Which Act, if your Majesty shall be pleased (as an Argument of your gracious Acceptation) to adorn with your Majesty's Royal Assent (without which it can neither be compleat and perfect, nor remain to all Posterity, according to our most humble desires, as a Memorial of your princely and tender Affection towards us) we shall add this also to the rest of your Majesty's unspeakable and inestimable Benefits". Here they plainly acknowledge these two things. First, That the Crown descends by Proximity of Blood, and that immediately, even before any Ceremony of Coronation, or otherwise ; so that there can be no *Interregnum*, or Vacancy of the Throne ; and accordingly it is a maxim in Law, that *Rex non moritur*. Secondly, That the Assent of the King is that which gives the Life, Being, and Vigour to the Laws, without which they are of no force : therefore I shall plainly prove these Acts to the contrary to be void. It is a Maxim in our Civil as well as your Common Law, that every *Senatus-Consultum*, or Decree of the Senate, as also every Statute or Act of Parliament, must be abrogated and repeal'd by the same Authority by which it was made. Since therefore that Act of the first of *Edward IV.* whereby he was declar'd to be lawful King, as descended from *Lionel Duke of Clarence*, third Son of *Edward III.* by *Philippa* his Daughter and Heir, and that *Henry IV.* and *Henry VI.* who had successively held the Crown, were Usurpers, and only pretended Kings ; it would necessarily follow, that none can after this so solemn Law and Declaration, lawfully succeed to the Crown of this Realm, but such as have a true and just Right as Heirs by Blood, according to the course of descent allow'd of by the common Laws of this Kingdom : and therefore *Henry VII.* being an Usurper, and enjoying no more than a Matrimonial Crown, could not join with a Parliament in making any Law contrary to that of the first of *Edward IV.* which had been so solemnly pass'd, and settled in Parliament by a King whose Title was by descent indisputable.

So likewise in the matter now in dispute between us, I can never apprehend how a pretended Statute made in a Convention, and not in a lawful Parliament summon'd by the King, can first declare the Throne vacant, and then appoint those to fill it, who certainly can have no just Title to it, according to that Act of Recognition of King *James* ; " which expressly declares, that they themselves could not have made that Act to be compleat and perfect to remain to all Posterity, without his Royal Assent." Which being once pass'd into a Law, by a King whose Title was indisputable, can never afterwards be alter'd (if ever it can be at all) but by a Parliament as legally call'd, and that by a King whose Title is also as legal as that of King *James I.* This Objection, tho I have often urg'd in other words, yet could I never yet obtain a satisfactory answer from you.

F. Tho I have already in part answer'd this Objection at our last Meeting, and have also partly done it already in this ; yet since I see you so much insist upon it, and do also urge it again in other words, with a fresh addition of new Arguments ; I hope you will not think me tedious, if I am also necessitated to repeat the same things again, and put you in mind of what I have already prov'd : which when I have done, I doubt not but this Argument of yours will signify very little. Your first mistake therefore is, that *Henry VII.* being an Usurper, had no power to alter the course of Hereditary Succession, settled by the Statute of the first of *Edward IV.* whereby he was declar'd lawful King : in answer to which, I must put you in mind, that this was the first time that ever this Point was so settled, and that not till after a long War, and by subduing all those that held with the House of *Lancaster*, he had made such a perfect Conquest of all that oppos'd him, that there were no Lords or Commons in this Parliament, but what were intirely of his Party. Yet we see that when *Henry VI.* got the upper hand again, his Party revers'd this Statute of *Edward IV.* and declar'd the Crown to belong to *Henry VI.* and his Heirs ; which

which Act was reversed again by the next Parliament, in the 11th of *Edward IV.* when he again recovered the Crown by another Battel against *Henry VI.* So evident it is, that whoever is once seated in the Throne, and is recognized by Act of Parliament, tho of his own summoning, all his Acts till they are repealed do hold good, tho he were declared an Usurper, and himself attainted by Act of Parliament. And therefore admitting that *Henry VII.* was an Usurper at the time when this Act we now discourse of was made, yet would it not render this Act void as you suppose, since it was never yet repealed by any subsequent Statute.

But indeed *Henry VII.* was no Usurper at the time when this Statute was made; for you your self have already granted, that he had a good Title in right of his Wife, which he never renounced or disavowed: and therefore we may very well suppose that she, tho Queen *de jure*, gave her tacit Consent to this Act in the Person of her Husband; and if so, I cannot see any reason why it should not stand good, not only against her self, and her own Children, but also against all others who should claim under her Title. But if you say she could not do this in prejudice of her own right Heirs, because the Crown had been already declared by Act of Parliament to be hereditary, and not to be acquired by Usurpation; this is to beg the Question, and to suppose an hereditary Descent to have been the fundamental Law, and constant Practice of the Succession of the Crown before that time: whereas I have already proved, that till the Reign of *Edward I.* the Crown was partly hereditary, and partly elective; and ever since that time, tho it has been still claimed as hereditary, yet has it been always believed to be the Right of the Parliament to declare who was lawful King; and that whosoever was so declared and recognized, has been always looked upon, in the eye of the Law, as the only rightful and legal King, to whom the Allegiance of the Subjects was due, and whose Statutes are obligatory at this day.

This being so (as it cannot be denied) your Argument from the Act of Recognition to King *James I.* may be easily answered; tho I should grant at present (for Discourse-sake) that their now Majesties King *William* and Queen *Mary* are only King and Queen *de facto*: for if all the Statutes of these three Kings of the House of *Lancaster*, and of *Richard III.* (nay even those Statutes by which themselves were declared to be lawful Kings, and the Crown settled upon them and their Issue) have at all times held good, till they were lawfully repealed; I desire you would shew me any sufficient reason why the late Act of Recognition of their present Majesties Title, and for the Settlement of the Crown upon their right Heirs of the Protestant Religion, should not have the like force and effect in respect of our Allegiance to them, as it had to all other Kings *de facto* who have hitherto sat upon the Throne, tho perhaps it may derogate from the intent of that Statute of Recognition of King *James I.* nor does it make any Difference, tho we suppose that this Act was made by a King by Descent, and that we now discourse only of a King and Queen *de facto*, and a Parliament called or owned by them; since the Law allows no Difference, as to their Legislative Power, between Acts made by a King *de facto*, and one *de jure*.

And therefore tho I grant, (1.) That those Conclusions you draw from this Statute are true, that there is no Interregnum or Vacancy of the Throne; and, (2.) That the Assent of the King is that which gives the Life, Being, and Vigour to the Laws: yet as for your first Conclusion, that there can be no Vacancy of the Throne, it is only to be understood, that ordinarily, and according to the common Course of Succession, there can be none; and yet extraordinarily there may, as you your self must grant: since upon the Death of Queen *Elizabeth* there might have happened a Contest between King *James* and the then Earl of *Hertford*, as Heir to *Mary* the French Queen, second Sister to King *Henry VIII.* upon whose Heirs the Crown was settled by *Henry VIII.*'s Will, as I have already mentioned at our last Meeting. And if it had been a Doubt whether this Will had been rightly made or not, it could have been no otherwise decided but by War, or else the solemn Judgment and Recognition of Parliament of that Title they had judged to be best; and he who had been so declared, would certainly have been lawful King, and all the Nation had been obliged to swear Allegiance to him. Apply this to the present Case, admitting King

James

James to have truly abdicated the Throne, and see whether it be not exactly the same, supposing (for once) your Prince of *Wales* to have been indeed the Son of the late King and Queen; and tho it is true he is not yet declared an Impostor, yet is he neither acknowledged as their right Heir, for the Reasons I have already given.

But as for your next Conclusion, that it is the Assent of the lawful King that gives Force and Vigour to a Law; from whence you would infer, that the late Act of Recognition and Settlement is void, because not made by those who were lawful King and Queen at the time of the making this Act: this is also to beg the Question. For tho it is true the Act of Recognition to King *James* declares this Act could not be compleat without his Majesty's Royal Assent, yet it is not there said, that no other King but he who claims by Descent (as King *James* did) could pass an Act that should be good in Law; since we find by the whole Course both of Law and History, that the Statutes made by Kings *de facto* are as truly and as much Laws as those made by your Kings *de jure*; and Attainders for Treason committed against them, have been so far from being declared void, that they could not be reversed by any other means than by particular Acts of Parliament made for that purpose, as I have already shewn you from divers Instances, both from History and Records. Nor is your Exception against the present Parliament's not being called by the King's Writ of any force: since I have already proved at our last Meeting, from the Example of the Great Council that assembled to recognize and ordain *Edward* the First to be King when he was in the Holy Land; as also by the Parliaments of *Edward* and *Richard* the Second, by which they were deposed, and *Edward* the Third and *Henry* the Fourth declared to be their Successors; That those Parliaments could not be summoned by those Princes whom they so recognized: and therefore tho they were called by the Writs of the former Kings, yet their Authority determined as the Parliament of that King that called them, upon his ceasing to be King; and therefore must owe their sitting longer wholly to the Authority of him they had already declared King, whose Presence and Authority was then looked upon as sufficient to give them power to sit and make Laws with the succeeding King, tho they were never summoned by him.

To these Parliaments I may add that of the first of King *Charles* the Second, which called home the King, and after his Return made several Statutes both publick and private, which stand good to this day: so that to conclude, you have no reason either from Law or History to maintain that there can be no Vacancy of the Throne, or that none can be declared King or Queen, but in a Parliament summoned by the Writs of that Prince, whose Title they are to recognize.

M. I shall not deny the Matters of Fact to have been as you lay them, as to the Great Councils or Parliaments you mention; but in answer to this you may remember, that as for those Parliaments called in the Name of *Edward* or *Richard* the Second, there is no Precedent to be drawn from them, because they served only to depose their lawful Kings, and to set up those who had no Right, at least as long as they lived: and you very well know, that any coercive Power in the two Houses of Parliament over the King, is expressly renounced and declared against in the Parliament of the thirteenth of *K. Charles* the Second, as I have already shewn you. But as for the Convention which was called in the first Year of that King, I have also given you my Judgment of it, that tho they might lawfully meet to vote the Return of their lawful Sovereign, and to recognize his Title, yet were they not for all that a lawful Parliament, as to the raising of Moneys, or making of Laws; and therefore whatever they did to both these, was fain to be confirmed by the Parliament of the Thirteenth I now mentioned.

But indeed I cannot but admire at this mungrel hodge-podge Course of Succession, which you now suppose to take place in *England*; for you cannot deny but the Crown is Hereditary, and has been always claimed as such for near 500 Years: and yet for all that, whenever an Usurper and a Parliament shall agree together, he to take the Crown by force, and they to recognize his Title as soon as he pleases to call them, he must then be looked upon as a lawful King; and the just and rightful Title of the true King, or lawful Heir of the Crown, shall be so far destroyed, as that Allegiance must be due to this Usurper,

per, tho perhaps he obtained the Crown by the most horrid Villanies in the World: as the deposing and murdering of his lawful Sovereign, as *Henry* the Fourth did, and which would also have been the Case of *Oliver Cromwel*, had he ever taken upon him the Title of King. So that this is to set on foot at once two contrary legal Rights; a legal Right and Title to the Crown by Descent of Blood, without a Right to exercise the Authority belonging to a King, and a legal Right to wear the Crown, and exercise the Authority belonging to it, without any antecedent legal Right to the Crown it self: which would indeed render the legal Authority in *England* to be like the Right that Men have to those Creatures that are *fera natura*, which belong to him who can get them into his power; for as to the Consent or Recognition of Parliament, I look upon that as a mere bauble, since your self cannot shew me any Usurper since the Conquest, tho ever so wicked and notorious, who ever failed to have his Title so recognized and confirmed by Parliament, as you your self cannot deny; which methinks is a high Derogation from the Dignity of a true Hereditary Monarchy, such as ours is, or as least ought to be.

E. I shall reply but this once upon this Head, since I see there can be nothing new said upon it; and therefore you your self are forc'd to repeat what you have already urged at our last Meeting, only you strive to support it by fresh Authorities: therefore as to the Parliaments which deposed King *Edward* and *Richard* the Second, I cannot blame you for denying them to be lawful Precedents, because they make directly against your Opinion; but you say nothing to that of the first Great Council or Parliament of *Edward* the First, which not only ordained he should be King, but also appointed all the Great Officers of the Kingdom which were to govern it in his absence. But you may deny the Authority of those Parliaments of the first of *Edward* the Third, and first of *Henry* the Fourth, as much as you please in a Chamber: but if you should do the like at *Westminster-Hall* against any Act of Parliament, because made whilst *Edward* or *Richard* the Second were living, you would soon be over-ruled, and told that those Laws still continued in force and unrepealed, and it did not belong to private Men to question those Acts that have been hitherto received for Law.

But as for what you have said against the Authority of the Acts of that Parliament that brought in the King, I have already proved that they were only confirmed *ex abundanti cautela*; and that they had been good without it, appears by this, that all their private Acts, tho never confirmed in the following Parliament, are still in force. But if the solemn Recognition of a King's Title by Parliament be such a bauble, and so easily obtained (as you suppose) I may say the same of that Act which recognized King *James* the First's Title, that it was done merely out of Flattery upon his Accession to the Crown: nor can you reply that they might do this, because he was the only right Heir; this is to beg the Question, since if he had not been so, it would have been all one, as you your self confess.

As for the rest of your Arguments, which you draw from the different means which our Law allows for Princes succeeding to the Crown, which you call a mungrel hodge-podge Course of Succession, and that it derogates from the Dignity of a true Hereditary Monarchy; I shall only say, that if our Law has now established it so, no private Man ought to judge otherwise; for *nemo debet esse sapientior legibus*, is a Maxim as old as true. But indeed tho our Laws do establish a legal Right in the present Possessor of the Crown, when once crowned, and recognized by Parliament, since they will not allow the Parliament to judge of, or examine the King's Title, or by what means he attain'd the Throne; yet this does not alter the ordinary Hereditary Course of Succession, for the Law still looks upon the Crown as Hereditary, and the Change of the Person or Royal Family does not make the Crown cease to be so. And therefore whoever has Possession of the Crown, has an Hereditary Crown, and as such, may leave it to his Heirs as long as they can keep it; as is plain from the Example of the three *Henrys* who succeeded each other, and who had not only Allegiance sworn to them, but they who acted contrary thereunto, were judged and executed as Traitors: so that the Law did all it could to maintain the Crown in the right Line of Succession. And if any Kings have gained it by Usurpation, tho the Parliament have owned the Authority of such an

Usurper, yet have they not thereby approved the Action: and you your self must acknowledge a great difference between these two, since you have more than once acknowledged that an Usurper, or King in Possession, has a good Title to a Crown, in case all the right Heirs are extinct, or by their not claiming it for any long time, are supposed to have made a tacit Cession of their Right; since it is not so much to the Person, as to the Authority (which we grant to be from God) that we pay our Obedience.

E. L. R. p. 18.

But let us also for once suppose that there may be a legal Title to a Crown without a Right to exercise the Authority belonging to it, and a legal Right to wear the Crown, and exercise the Authority belonging to it, without an antecedent legal Right to the Crown it self; this is no such Absurdity as you suppose, if you please to consider that allowed Distinction between *jus ad rem*, and *jus in re*, with the reason of it: for 'tis an approved Distinction in Law, that one may have a Right to a thing, and another a Right in it; the one is a Right of a legal Claim, the other of a legal Possession: And that this may and must be in all Civil Governments, and mere legal Rights, appears from the different Laws and Customs on which such different Rights are founded. This I have hinted before, but must now explain it more particularly; in all Civil Societies there must be particular Laws to determine personal and particular Rights, and whatever is due to any Man by such Laws, is his legal Right: But yet we know these Laws can determine no Controversy without a living Judge; for if every Man were to judge for himself, every Man will make the Law to be on his side, and then we had as good have no Laws at all. And therefore the fundamental Law of all Societies, which is superior to all particular Laws, is this, That the last and final Judgment of Authority shall be taken for Law, and that shall be every Man's Right as to all the Effects of Law, which is thus adjudged him. Whoever calmly considers these things, will find that it is impossible it should be otherwise, without overturning all Civil Governments: And this I have proved to you from the Example of a right Owner of an Estate, when outed of his Possession by a Verdict of a Jury and an unjust Judgment in one of the King's Courts, that no Man ought to restore him by Force to his Possession, till he has again reversed that unjust Judgment given against him.

M. Tho I grant this is true in the Case of private Persons and their Inheritances, yet is it not so as to Princes, who hold their Crowns by a Title superior to the ordinary Municipal Laws, and therefore are not only Kings by Law, but by Divine Right, and the fundamental Constitution of the Government, and so cannot have their Title adjudged by Parliament, as you suppose: for our best Divines have unanimously concluded out of Scripture, that all lawful Kings and their Royal Power is from God by Divine Right, and is not from the People, no not in Elective Kingdoms (such as *Poland* for example;) for even there the conferring of the Royal Authority is from God, and not from any Law made by the People, and neither they nor their Representatives have any thing to do to judge of it: for I would gladly know who made that Law which made the King; certainly the King did not make it, for that Law which made the King must of necessity precede and be before the King, who had his Royal Power and Kingly Office from that Law.

F. I see you are very hard put to it, since you are again forced to fly back to your old Covert of a Divine Right in Kings, which is not to be derived from any Law made by the Consent of the People; and if this be true, I desire you would show me how Kings can at this day owe their Crowns immediately to God, and not to the Law, since God does no longer confer Kingdoms by any express Designation of the Person, but by the ordinary Course of his Providence: and then pray tell me why all Princes whatsoever, when they are once seated in the Throne, let them come by it which way they will, must not derive their Power alike from God; and consequently Kings, by an unjust Conquest or Usurpation, are as much from God as those who ascend the Throne by the Consent or Election of the People. For if the Peoples Consent do no more than design the Person, but that it is God alone who gives him his Authority, then which way soever he obtains this Power of the Sword, which is the only Sign of God's conferring this Authority, it will be also the Ordinance of God; and consequently their present Majesties being once
seated

seated on the Throne, are upon these Principles as much to be obey'd as the Ordinance of God, as King *James*, or any other Hereditary Monarch whatever.

But if you do not like this Doctrine, and tell me of a legal successive Right which King *James* and his right Heirs have to the Crown, according to the fundamental Constitution of the Nation; this is plainly to own the King to be so by the Law of the Land, tho in words you deny it: for every Hereditary Right is either a continued Usurpation by Force, which can give no Right at all; or a Right by Law, which is by the Consent of the People to entail the Crown on such a Family: which certainly is to make a King by Law, that is, by the Consent of the People. But if you will suppose that it was the Authority of the first King alone who thus entail'd the Crown upon himself and his right Heirs, I desire you would show me how the Crown could be so entail'd without the Consent of the People, so as that his Successor may not alter it, and give it by his last Will and Testament to which of his Sons or Daughters he pleases; since Sir *Robert Filmer* himself acknowledges, that a Testamentary Heir to a Crown in an absolute Monarchy, is as much by Divine Right as if he had come in by Succession; as appears by the Instances he gives in *Setb*, who could have no Right to succeed his Father *Adam* in the Government of Mankind, while *Cain* his elder Brother was alive, by the Will of *Adam* his Father. The like I may say of *Solomon*, who by his Father's crowning him King in his life-time, and thereby making him his Successor, gave him a Right to rule over *Adonijah* his elder Brother. So that I may very well ask you, if the present Law of the Land did not proceed from the free Consent of the People testified by long Custom, or express Declaration of the People by their Representatives in Parliament; I desire to know why the King of *England* cannot as well settle the Crown by his last Will upon which of the Blood-Royal he pleases, as that it should be lawful for the *English-Saxon* Kings to exercise this Privilege, as Dr. *Brady* supposes they did before the Conquest, without the Consent of the Great Council of the Nation? So that I think I may much better ask you what that Law was, and who made it, which you suppose to make Kings prior to, and independent from the Consent of the People; since if there be any such Law, it is either as yet unknown to Mankind, or else all those who are once possessed of Kingdoms, have an equal Title to them by Divine Right. But indeed it is only some Divines who were more scrupulous than knowing in Politicks, who first started this Question, whereas indeed there is no such great Mystery in it: for that Law by which the first King of *England* for example was elected, was not in being before the King was made, nor yet was the King in being before that; but when the first King was made so, by the Consent and Election of the People, the King, and the Law that made him so, began both together: that is, the People by chusing of him to govern upon certain Conditions, and he, by accepting the Crown upon those Conditions, was that Law by which he then took the Crown, and by which it has been held ever since that time. So that if the Crown ought to be enjoy'd according to a legal Right, and that there must be some Judges appointed of this Right, whenever any Disputes may happen about it, either every Pretender to the Crown must judge for himself, and then he will be both Judge and Party in his own Cause, or else it must be left to the Conscience of every individual Subject in *England* to side with what Party he pleases, that may thus pretend to it: and so there may be a dozen Competitors for the Crown at once, and all with equal Right, for ought that any body knows. Or lastly, this Right must be left to the Determination of some Civil Judges to judge whose Right it is; and who can these Judges be, who shall thus judge what are the antient Laws of Succession, and Rules of Allegiance, but the Great Council of the Nation? Therefore if they have already declared and recognized King *William* and Queen *Mary* to be lawful King and Queen of this Realm, I think every Subject of the same may very well justify their swearing Allegiance to them, not only by virtue of this Statute of the 11th of *Henry* the Seventh, which requires Allegiance to be paid to the King in being, but also from the Equity and Reasonableness of the thing it self, to hinder the Nation from falling together by the ears, and entailing Civil Wars from Generation to Generation, if the Subjects were obliged by their former Oath of

Allegiance to the King *de jure*, to endeavour to restore him by force of Arms. And therefore the Preamble to this Statute very well and truly sets forth, "That it is not reasonable, but against all Law, Reason, and good Conscience, that the Subjects going with their Sovereign Lord to the Wars, any thing should lose or forfeit for doing this their true Duty and Service of Allegiance to the King for the time being."

M. But pray tell me, is not this very strange and unjust, and that by your own showing, that a Prince should have a legal Right and Title to the Crown, without a Right to exercise the Authority belonging thereunto? for they must now pay Allegiance to the King in being, let him be ever so great an Usurper. So that indeed the Preamble to this Act is expressly false, since I think it is very unreasonable, nay against all Law, Reason, and good Conscience, to swear Allegiance to an Usurper; for by that means not only all good Subjects would be put out of a Capacity of endeavouring to restore the King *de jure* to his Throne, tho ever so unjustly deposed or driven out, as in Duty they ought, but also those who were instrumental in this Rebellion, and in depriving the lawful Prince of his just Rights, may not themselves endeavour to restore him; which would put them out of all possibility of making amends for the wrong they have done him, and of making restitution, by again restoring him to his Throne.

F. If this be all the difficulty that is left upon your Mind, I doubt not but to prove to you, not only from the Law of the Land, that Allegiance may be lawfully sworn in this case, but also that it is for the common Happiness and Peace of the Nation, which is the main End of all Government, that it should be so. And therefore I shall first freely grant, that tho it is Rebellion unjustly to deprive a King and his right Heirs of the Crown, and that those who had a hand in it are bound in Conscience to endeavour to restore him or them to their just Rights again; yet this must be done by no other Methods but what are consistent with the publick Peace and Safety of the Commonwealth: for if a King *de facto* has once got possession of the Throne, and has been crowned and recognized by Parliament, from what has been already proved, I think it is very plain, that they ought to obey him not only from the very Letter of this Law, but also because I have now said all private Persons ought to submit their Judgments in this matter to that of their Representatives, who if they have judged falsely, are to bear the blame; but yet their Judgment for all that is to be held for good, till it be reversed in the same way in which it was given: since if after such a Recognition every private Person should still be free to pay his Allegiance to him whom he supposed King *de jure*, it would certainly follow, that the Civil Society or Commonwealth must of necessity fall into Civil Wars; which is against the nature of Civil Societies, and inconsistent with the Duty of Self-preservation, which obligeth Men not to expose their Lives and Fortunes, but to obtain a greater Good than both those, which can only be the publick Good of the Community, and not the single Interest of any one Person or Family. And tho I grant it is a great Sin in those who are instrumental in raising Rebellion, and who are thereby guilty of a very enormous Crime; yet that which made it so, was not barely the Injury they committed against the Prince to whom (if alone considered) the Breach of an Oath (in withdrawing their Allegiance) could be no greater a Sin than the Breach of an Oath to another Person; but indeed the fatal Mischief and irreparable Damage they did the Commonwealth, is that which aggravates the Sin. And if a new Commotion to restore the King *de jure* would in all probability prove yet more destructive, and a Nation by being so much weakned by a former Civil War, be less able to bear a new Civil War, which may happen so far to the weakning of it, as to expose it to the Invasion and Conquest of a foreign Nation, who may be Enemies both to our Religion and Civil Constitution; in such a case I cannot think it our Duty to restore a Prince by force, tho ever so unjustly driven from his Throne. And therefore if I had been then a Man, tho I should have been as much for bringing home King *Charles* as any body ought to be, yet I should have been only for it in the way in which it was brought about; and should never have desired it, if it could not have been done but by an Army of *French* or *Irish* Papists. And the like I say now as to King *James*, seeing he is joined with the Interest of *France*, and is already gone into

into *Ireland* on purpose to renew the War, by the Arms and Assistance of those, whose Fathers, as well as several of themselves, did all they could to destroy not only the Royal Power, but also the *English* Religion and Government in that Nation.

And therefore I must freely tell you, that if even Rebels have put it out of their power to make Reparation for all the Wrongs they may have done by rebelling against their lawful Prince, because he in possession is too powerful to be driven out again without a violent Civil War, and a general Concussion of the whole Commonwealth; this Reparation to the injured Prince being not to be made, without a greater Evil than that they endeavoured to avoid, it ought to be omitted till it may be done with more Safety to the Nation, or else not at all: I say, if there be no other way to make Reparation to their injured King, but by engaging the Nation in fresh Civil Wars, they ought not to attempt it by such unlawful and destructive means.

M. I confess the Discourse you have now made carries the greatest appearance of Truth of any thing you have yet said; since it is drawn from the publick Good of the Nation, which I grant to be comprehended under the common Good of Mankind; and you have done well to own it to be Rebellion, to deprive a lawful Prince and his Heirs of the Crown: yet that it is unlawful to restore them again to it, if we think it cannot be brought about without a general Subversion of our Religion and Civil Liberties, may be a Question. I grant indeed, if we could be absolutely certain of this, there would be some colour for this Argument; but since future things are not capable of Demonstration, if the restoring our lawful Prince be a Duty incumbent upon every good Subject, we ought to endeavour it, tho with some Danger and Hazard of whatever is dear to us: for God will either protect us both in our Religion and Civil Liberties, for thus honestly performing our Duties (according as we are bound by our Allegiance) or if he has called us to suffer for the Truth, he will either find us Patience to bear it, or else provide us a way to escape. This I speak in relation to the *French* and *Irish*, whose Conquest and Malice you are so much afraid of, in case the King should happen to be restored by their Assistance: But indeed I think this a needless fear, since I suppose the King will be too wise to bring over so many of either Nation, as shall be able to make an entire Conquest of this Kingdom, lest thereby both he and his Crown may lie wholly at their mercy when the Business is done. Nor do I think it either in the power of the *French* or *Irish* to perform these dangerous things: not of the former, because (as I now said) I suppose the King will never bring over more of them along with him, than what may serve to make a stand against the Prince of *Orange's* Forces, till his good and loyal Subjects can come in and join with them to his Assistance; and as for the *Irish*, they are also the King's Subjects, and tho ignorant, they are very inveterate against the Protestant Religion, and the *English* Nation and Interest; yet they may be so governed and over-ruled by the King, as not to be able to do us any considerable Damage.

But as to the King of *France*, I do really believe he is far from intending to make an entire Conquest of this Kingdom for himself, much less desirous to make the King as absolute a Monarch here, as himself is in *France*: for as to the former, he has too much Consideration of his own Glory and Reputation in the World to seize upon the Kingdom of a near Kinsman and Ally of his own Religion, and who had been driven from his Throne chiefly for being too much in his Interest: And besides all this, he may very well fear, that if he went about any such thing as an entire Conquest of this Nation, all Parties may join against him as a common Enemy, and drive him out again, as the *English* Barons did Prince *Lewis* in the time of King *Henry III*. Nor can it be the *French* King's Interest to make our King absolute here; for then having the Persons and Purse of his Subjects wholly in his own power, King *Lewis* might justly fear, that either this King or his Successors may prove as dangerous Enemies to the Crown of *France*, as ever they have been in former times, if ever our Kings should go about to revive their antient Pretensions to *France* or *Normandy*, or make war upon some other Quarrel: and therefore I think it will be more for the Interest of *France* to leave us our Laws, Liberties and Privileges, as we now enjoy them; nay, to make an express Capitulation for them,

them, and when he has done, to foment those Jealousies and Disputes, that are still like to arise between the King and us about them, thereby to hinder us from joining against him; than by rendring the King Absolute to take them quite away, and put the sole Power of the Purse as well as of the Sword wholly into his hands.

To conclude, You do also very much misrepresent the matter in supposing, that tho the King cannot now be restor'd without falling into a new Civil War, it does therefore follow, that such a War is not to be desir'd for the publick Good of the Nation: since we shall thereby not only restore the Crown to its right Owner, and the Succession of it to the lawful Heir; but also shall restore Episcopacy in *Scotland*, and prevent the Church of *England* from falling into a dangerous Schism, by depriving the ABp of *Canterbury*, and as many other of the Bishops, who are so honest as not to take a new Oath, for standing out against it, by the Temporal Power of a pretended Parliament, without the Judgment of a lawful Convocation, who are the only proper and legal Judges.

You likewise as much mistake, in supposing that this War can no ways be finish'd, but by so great a Concussion as shall so much weaken the Kingdom, as to render it expos'd to the Invasions of foreign Enemies, in which you may be very much deceiv'd: for who can tell but the Hearts of this Nation may come to be so inclin'd to receive their lawful King, and his right Heir, and may be so weary of the present Usurpation, as upon his first appearance in *England*, with an Army sufficient to defend those who shall come into him, so many of his Subjects will take this advantage, as will be more than enough to restore him with as little Blood-shed, as when he was driven out? And then I think no indifferent Man but will acknowledge that such a War would prove for the best, since it will not only settle the Government upon its antient Foundation of a lineal Succession, but will also extinguish those fatal causes of War, not only from among our selves, but also from foreign Princes, as long as the King, and the Prince of *Wales*, and his lawful Heirs, shall continue in being; which I hope will be much longer than those upon whom your Convention has settled the Crown, either in Present or Reversion.

F. I doubt not but to shew you, that all you have now said, is either built upon false Principles, or else deduced by very uncertain Consequences; for in the first place, tho you doubt my Principle, That the People of this Nation are not bound to restore King *James* to the Throne, if it cannot be done without the evident Destruction both of our Religion and Civil Liberties, it certainly is true, (granting it to be ever so much our Duty to restore him, when with Safety we may.) For if the Obligation of all Moral Duties whatsoever, is only to be judg'd of according as they more or less conduce to the Happiness or Destruction of the common good of Mankind, (whereof this particular Nation makes a part) it will necessarily follow, that this Duty of restoring King *James*, is not to be practis'd, if it cannot be brought about without the Destruction of our Religion and Civil Liberties, since it is only for the maintenance of those, that even Kings themselves were first ordain'd in this Nation; and it is evident, that this Kingdom may be sufficiently happy, and subsist in the State it is now in, tho neither King *James* nor your Prince of *Wales* be ever restor'd to reign over us.

So that then all the difficulty that remains, is, That since his Restoration is not otherwise to be brought about than with the assistance of great Numbers of *French* or *Irish* Forces, whether it be not only so small a hazard as you make it, but twenty to one, that his coming in upon these Terms will produce those dreadful Effects, which I say will certainly happen from it? And tho I grant that future things, especially in the Revolutions of Government, are not so capable of Demonstration as Mathematical Propositions, yet if all the Circumstances of Time, and the Temper and Disposition of the King himself, and those who are to join with him in bringing him in again, be consider'd, it shall appear, that morally speaking nothing less than the evident Destruction of our Religion and Civil Liberties will follow; I think I may still positively affirm, that we are not oblig'd to restore him till this Temper of Mind be alter'd, and that he can be restor'd without these fatal Consequences I now mention. And if these Cautions are not observ'd, I deny that God hath any way promis'd to protect either our Religion or Civil Liberties, or that he is bound to provide us a way
to

to escape, as you suppose; if to perform this suppos'd Duty of Allegiance thus unseasonably, we slight the only means God has ordain'd for our Preservation. But as for the patience under those Sufferings that may then happen, that is a very sorry reason to embrace them; since God may give us that Grace, if he pleases, as the only Comfort we can have left us, when by our own Folly and mistaken Notions of Duty, we have brought all those Evils upon our selves.

I shall therefore now proceed to show you, that these Evils I speak of, must necessarily happen to us, in case King *James* be restor'd by the *French* or *Irish* Papists. In the first place therefore, it is very fallly suppos'd, that this Alteration can be brought about without an entire Subduing or Conquest, not only of their present Majesties, but the whole Nation; as is apparent since none but the Papists and some few of the Clergy, Nobility and Gentry desire his Restoration, and who if they were put all together, will not I believe amount to the hundredth Man, who would be either willing or capable to come in to his Assistance with Men or Mony: and therefore it is a vain Supposition to believe (as you do) that this new Revolution can be brought about without any more Difficulty or Bloodshed than the last, as long as the present King and Queen continue to govern us according to the Declaration they subscrib'd upon their acceptance of the Crown, and the Coronation-Oath they have since taken; which I hope they will always do, since nothing but following King *James's* Example, as well as to Religion as Civil Liberties, can ever make this Nation willing to receive him, or your Prince of *Wales*, with so little difficulty as you are pleas'd to imagine.

Since therefore the business must be wholly done by force, I shall in the next place consider all those Suppositions you have laid down, as well in respect of the *French* as *Irish*, who are the only Hands that I see likely at present to do this Work. First, as to what you say, that the King would be too wise then to bring over along with him so great numbers of the *French* and *Irish* Nations, as shall be able to make an entire Conquest of this Kingdom, lest thereby both he and his Crown may lie wholly at their mercy, when the Business is done; you have hereby granted as much as I desire. For if their Majesties are never like to be without an Army in *England*, of at least fifteen or twenty Thousand Men as long as this War lasts, and the Militia of this Nation, which are almost totally against King *James's* Interest, and do amount altogether to above a hundred thousand Men; I think you your self will grant that King *James* cannot attempt coming over hither with an Army of less than thirty or forty thousand Veteran Soldiers of the *French* and *Irish* Nations, tho you should reckon the Papists and others who should come in to his Assistance at twenty thousand more; who if they should be all together able to beat not only King *William's* standing Army, but the Militia of the Kingdom to boot, I desire to know what shall hinder them from making as perfect a Conquest of this Nation, as ever *Cromwell's* Army did, either of *England* or *Scotland*, and consequently of setting up what Religion or Government they please in this Kingdom; which, that it will not be what is now exercis'd either in Church or State, I think any unprejudic'd Man will easily grant me.

But your next Suppositions are altogether as precarious, That it is not either the Design, or Interest of the *French* King, to make an entire Conquest of this Kingdom for himself, nor yet to make King *James* an absolute Monarch here. One of these I must needs believe will happen: for tho perhaps that King may at present stand so much upon his Glory, as not to seize the Kingdom of a Kinsman, and an Ally, wholly to his own use and benefit; yet it is most likely, that he will retain *French* Garisons in all or most of the strong places of *England*, not only for the security of the Charges he will have been at to place King *James* on the Throne, but also as a tie upon us that we shall never endeavour to drive him out again, let him use us as he pleases. So that tho I grant, he may not make an absolute Conquest of us now, yet it may be in his or his Son's power to do it hereafter, if ever King *James's* Son shall go about to shake off that Yoke, when once the present Obligation is forgot, or the near Relation between the two Kings shall be farther remov'd. Nor is what you say less precarious, that it will not be for King *Lewis's* Interest to destroy our Liberties, and make King *James* an absolute Monarch, because the Kingdom will be then weaker and more
divided

divided than it is now, by those Jealousies and Disputes we shall then maintain with the King about our Civil Rights: which is indeed so far true, if he governs when he returns in the same arbitrary manner as he did before; but if he govern according to Law (which no wise Man can expect) there needs be no more Divisions among us than were for a great while after King *Charles II's* coming in. But that the *French* King should fear, if he once made the King of *England* an absolute Monarch, and put the whole Power of the Purse as well as Swords of his Subjects in his hands, he might then become so formidable as to be an equal Match to *France* it self, and to be able to demand either the whole Kingdom, or any part of it, is yet more pleasant; since *France* is now, in comparilon with *England*, not only in respect of Men, but also the Revenues belonging to the King, as ten to one: and I think I may very well maintain, that if *England* should once come to be govern'd as *France* is, it would be so far from growing richer, or more powerful thereby, that from the intestine Grievances and Discontents that such a violent course of Government would cause in the minds of the People, of all Sorts and Conditions, by those excessive Taxes and Oppressions that would follow from such an Arbitrary Government, the Kingdom would quickly diminish and decay, as well in People as Trade and Riches, and consequently in Power too: which is but the product of both these, notwithstanding whatsoever the fair appearance of an outwardly magnificent Court, and a great standing Army may produce, in the minds of those that do not truly consider or understand the true Grandeur and Safety of the Prince, and Happiness of the People.

But granting all this to be as you suppose, pray tell me what shall become of our Religion and Civil Liberties, not only in respect of the *French* King, but of King *James* himself? Can any one believe, that either of them will cease to be instigated by the Jesuits their Confessors to destroy the Northern Heresy (as they term our Religion) as well in *England*, as it has been in *France*? No, the poor *Vaudois* in *Savoy* have been too recent an Example, that the King of *France* would carry the Persecution to the same degree here, as he did there, and that King *James* being wholly in his power, will not be able to withstand his Commands, as well as the constant Solicitation of his Confessors of the same Order and Principles as those of the *French* King, to which Holy Fathers the Protestant Religion in *France* and *Savoy* does chiefly owe its Destruction.

To conclude, let us suppose that King *James* shall prevail in this War by the help of the *Irish* Army, now rais'd by the Earl of *Tyrconnel*; can we expect better Quarter if the King prevails by their Arms and Assistance, than if they were intirely *French*? For having once conquer'd this Nation, it will not be in the King's power to govern them so easily as you expect; but being inveterate Enemies to the *English*, they will not only possess what Estates they please of the *English* Nobility and Gentry in *Ireland*, but in *England* too, which will be declar'd forfeited by their Owners opposing of King *James*: and then I will leave it to your self to judge in what a Condition we shall be both as to our Religion and Civil Liberties, when the King shall come to be manag'd by Men who are declar'd Enemies to both; neither will it be in the power of those few moderate Men, either of the Popish or Protestant Religion, who take King *James's* part, to hinder it, since the other Party will by means of the Priests and Jesuits, and the Interest of *France*, run down all sober Counsels, and they will be look'd upon but as Trimmers (at best) that oppose it.

But as for King *James* himself, I desire to know of you what trust there can be put in him, or what assurance he can give us for the maintenance of our Religion and Civil Liberty, more than the renewing of those Promises, and that Oath which he has already broken? This being most likely to be the Consequence of things, if King *James* prevail, I shall leave it to your self, or any indifferent Person to judge, if what I have undertaken to prove, be not as clearly made out as future things are capable of, and sufficient to deter any Man that loves his Religion or Country, from joining in such pernicious Designs.

M. I confess you have made a long and tragical Narration of the dreadful Consequences that may follow, both upon our Religion and Civil Liberties, if the

the King prevail by the present assistance of the *French* or *Irish* Arms; and were I sure of all this, I should so far agree with you as to this point, as never to join with them for the King's return: and yet for all that I can never look upon my self as freed from that Allegiance I owe the King, as well by being born his Subject, as from the Oath I have already taken to him and his Heirs, as long as they are in being; for I think I have already prov'd as well from Law as Reason, First, That the Bond of Allegiance (whether sworn, or not sworn) is in the nature of it perpetual and indispensable. Secondly, That it is so inseparable from the relation of a Subject, that altho the exercise of it may be suspended by reason of a prevailing Force, whilst the Subject is under such Force, *viz.* where it cannot be imagin'd how the endeavour of exercising it, can be effectually serviceable to restore the Sovereign Power to the right Owner, for the Establishment of that publick Justice and Peace wherein the happiness of Commonwealths consists; yet no outward Force can so absolutely take it away or remove it, but that still it remaineth virtually in the Subject, and obligeth to a vigorous endeavour (whenever the Force that hindereth it is over) and to the actual exercise of it for the advantage of the Party, to whom of right it is due, and the advancement of the common Good thereby, upon all fit occasions. Thirdly, That no Subject of *England*, that either hath by taking the Oaths of Supremacy or Allegiance acknowledg'd, or that not having taken either Oath, yet otherwise knoweth or believeth that the true Sovereign Power in *England* to whom natural Allegiance is due, is the King, his Heirs, and lawful Successors; can without sinning against his Conscience, take any new Oath, or do any other Act whereby to transfer his Allegiance from the King or his Heirs, to any other Party who have no right to it, and thereby put himself into an incapacity of performing the Duties of his bounden Allegiance to his lawful Sovereign, when it may appear to be useful and serviceable to him. This is the express Opinion of the Learned Bishop *Sanderfon* in his Case of Conscience concerning the lawfulness of taking the Engagement; which tho he did not think absolutely unlawful, because it might be interpreted in a dubious and qualified Sense, without abjuring the King's lawful Right to the Crown; yet cannot this new Oath be taken in the like doubtful Sense, because (as I have already prov'd) the words in the Oath being to bear true Allegiance to King *William* and Queen *Mary*, would be indeed a transferring of our Allegiance from our lawful Prince to others, which is absolutely unlawful.

F. I am somewhat pleas'd to see you are so far come off from your Bigotry, as not to think your self bound to assist for the restoring King *James*, as long as it is no otherwise to be done but by the evident Destruction of our Religion and Civil Liberties; but yet you say you cannot take the Oath, because it is Bishop *Sanderfon*'s Opinion, as well as that of our best Lawyers, that Allegiance is perpetual, and untransferrable to another, whilst the King or his Heirs are in being. Now let me tell you (speaking as a Lawyer) it may be prov'd from this Statute, as well as from the constant practice before that time, that Allegiance was due to the King *de facto*, and that by the Judgment of all the Judges in the Reign of *Edward IV.* But to speak of this matter, either as a Civilian, or a Divine, I think we are freed from the former Oath both by the Law of Nations, as well as the Law of God. For as for natural Allegiance, by which you suppose a Man is indispensably subject to the King in whole Territories he is born, and that as long as he lives, I can by no means understand, that being born in a Country, makes one a Subject for all his Life to the Government of that Country; or why being, when born, in a Country, it should make one become a Subject, more than being in the same Country at another time. Besides, E. O. p. 49. common Experience shews this to be false, because whoever is born in a Country, where his Parents are Foreigners, may (as it is allow'd by all) leave that Country when he pleaseth: but perhaps it may be said, he is a Subject to that Prince where his Parents were born; but what if they were born under the same Circumstances? Or suppose his Parents are of different Countries, as if a *Dutch* Woman, and an *English* Man have a Child in *France*, since *France* does not pretend to him, which of the Nations can claim him for their Subject, or must he be divided? So that I can see nothing at all in this notion of natural Allegiance, that can oblige any body in Conscience to observe it.

M. If then natural Allegiance signifies nothing, pray tell me is no body obliged to obey the King, or not to plot against him, until he has taken an Oath of Allegiance to the contrary? This would make mad work indeed, and upon these Principles no Man were bound to obey the King or his Laws, and not to conspire against his Person or Government, until he had taken the Oath of Allegiance; so that three parts of four of the Kingdom would be absolutely free from this great Duty.

F. No, Sir, you are very much mistaken, since I think I can found Allegiance to the King and Government upon a much firmer Foundation than that of being born his Subject; that I am so far from supposing that our Obligation commences from our taking the Oath of Allegiance, that tho I think it may serve to inforce our former Obligation to our King and Country, yet does it not superinduce any new Obligation thereunto: for indeed our Obligation to any particular Government may be made out from much surer Principles, viz. That every Person, tho he be born free, yet is he, for the sake of his own Safety, obliged to part with his Liberty, and put himself under the Protection of some Government; nor can he be secure in what he enjoys but by it, nor can he have a Right in a Country (that is already possessed) to Property, but by owning the Government of that Country: and when by enjoying the Rights and Privileges of the Subjects of that Commonwealth, he has owned himself a Member of it, and a Subject to its Government, he is then bound to maintain this Government, and also the King that administers it, from a double Obligation: the one particular in respect of himself, and that Protection he receives from him; the other more universal, proceeding from that Duty, which is incumbent upon every particular Subject to maintain the Peace and Happiness of the Commonwealth, as long as he continues a Member thereof. So that he is bound never to disturb it, as long as the main ends of Government can be had and enjoyed therein; and this is the only means that I know of, by which any Man (except by express Oaths and Promises) can consent to become subject to any single Person or Government. Now this tacit Consent of particular Persons being separately and singly given, unthinking People take no notice of it, and suppose they are as naturally Subjects as Men, and consequently that they have no more Right to free themselves from their Subjection, than from their human Nature; nay, must suffer themselves to be destroyed rather than endeavour it, let the Government oppress them ever so unmercifully: which is indeed to reduce Men to the Condition of brute Beasts, who belong to this or that Owner, because he either bought them with his Money, or else because they happened to drop from their Dams upon his Ground.

From what has been here spoken, I think we may deduce this general Conclusion, That every ordinary Subject, who enjoys the common Benefits and Protection of any Government, is bound in Gratitude not only to obey it, but also to be true and faithful to it during the time he lives under it, and is bound likewise not to conspire against it: and therefore that Oaths do not alter the nature of Allegiance, or make it due where it was not before, or any ways extend it, but only add a new Tie to pay that Allegiance which is due upon the account of Protection. He that lives under a Government, tho he has not sworn to it, owes it the same Allegiance as he that has; and if he should deny his Allegiance to it, would be equally guilty of Treason, tho not of Perjury. It is evident by the universal Practice of Mankind, that no Subjects ever thought themselves obliged by those Oaths of Fidelity (which all Governments have constantly imposed on them) when they could not be protected by them, and that this failure of Protection did not proceed from any fault in the whole Nation, or People themselves. And this may be proved by the common and constant Practice of all the Subjects of *Europe*; for who does not know that the Subjects of the King of *France's* last Conquests in *Flanders*, have been forced to swear Allegiance to him, tho they were satisfied that his Title was unjust, and that their natural Sovereign the King of *Spain*, to whom they had formerly sworn Allegiance, is still living? We have had also a late Example of the Subjects of the Duke of *Holstein-Gottorp*, who having both his Person taken Prisoner, and his Territories unjustly seized upon by the King of *Denmark*, in time of Peace, the Subjects of the said Duke were forced to swear Allegiance to the King, notwithstanding their former Oath to their Master;
nor

nor do our modern Casuists, as I know of, blame them for so doing. And why the People of *England* should be tied to harder Terms than all the rest of *Europe*, I wish you could give me a sufficient Reason; since the Legislative Power of *England* (wherein it is certain the People have a share) are presumed to recede as little as possible from natural Equity, and therefore design, by imposing such Oaths, only the Good and Preservation of the Civil Society, whose Interest it is, that they who have the publick Administration of Affairs should not be disturbed: but it is not at all material to that end, whether this or that Man hath this Power, provided it be well managed; nor can it, without the greatest Absurdity, be supposed, that such numbers of Men as Societies are composed of, who are by Nature equal, should oblige themselves, by the most solemn Ties, to become most miserable by living without Protection; nay to lose even their Lives, rather than own the Government that can and does protect them, for no other reason but such an extraordinary fondness to this or that Person, or Family, as to fancy the Government to be inseparable from him, not the Necessaries or real Conveniencies of Life, but only an Office (for Government is no other) which is but an imaginary Happiness. I grant therefore, that People should be true to those that have the present Administration of Civil Affairs, is all that Oaths of Fidelity require; and it is evident from the intent of it, that the late Oath of Allegiance required no more, and to extend it farther than the King in being, is not reconcilable with the Reason, End, and Design of paying Obedience, which is the Peace and Happiness of the Civil Society; which can never be maintained, if People may, for the sake of a single Person, disturb him that has the Administration of their common Affairs; and it would require Impossibilities, because private Persons are incapable of paying Allegiance to a King, when out of possession of the Government.

M. Notwithstanding what you have said, I think I am able to convince you of divers great Mistakes you have now committed in this Discourse of natural Allegiance, as also in the Obligation we are under by the Oath of Allegiance to King *James*. For first, as to natural Allegiance, you are very bold to suppose there is no such thing, when all your Law-Books hold so expressly that there is; I am sure this is to be guilty of the Fault for which you have already reprov'd me, of being wiser than the Laws. You are also much mistaken to suppose, that this natural Allegiance merely springs from hence, that the Persons obliged by it are only such as are born within the King's Dominions; for Persons born without the Realm may be also his natural Subjects, as are the Children of Embassadors born beyond Sea, and the Children of Aliens born within the Kingdom, which are not therefore natural Subjects of the King: So that the mere Circumstance of Birth does not alone entitle any one to the Privileges of a natural Subject, nor consequently bind him to all the Duties of natural Allegiance. But it is therefore called natural in our Laws, because, as the best Lawyers have affirmed, it is founded upon the Law of Nature, which gives a Sovereign Power a Right to the Allegiance of every one who is born under the Jurisdiction of it. As every Son is born a Subject to his Parents, and is by the Law of Nature obliged to honour, obey, assist, and support; so also is he born a Member of the Body Politick, and by consequence a Subject to the Sovereign of it; and accordingly, by the same eternal Law, is bound to pay all faithful Service and Obedience to him, when he is in a capacity to perform them.

But your next Mistake is yet worse, when you confound that common Obligation of a Foreigner or mere Denizen to be true and faithful to the Commonwealth wherein he lives, with this natural Allegiance of every *English* Subject: for tho I grant the taking the Oath of Allegiance does not inforce any new Obligation upon him that takes it, more than he was subject to before; yet for all that, I think you will not deny, but that there is a great deal of difference between that common Obedience or Submission which such a Foreigner pays to the King and his Laws in a Country where he sojourns, and that more perfect Allegiance arising either by Birth, or from such a Stranger's being naturalized, and by taking the Oath of Allegiance, becoming as true and perfect a Subject as a natural *Englishman*. And hence it is, that in all Wars declared between neighbouring Princes, whatever Subjects of theirs shall

presume to stay and reside in each other's Dominions, after once they are recalled home, may be justly executed as Traitors whenever they shall be taken. And therefore tho I grant that every Person now living in *England*, and of ripe Age, is obliged to obey your King and Queen *de facto*, in all ordinary and lawful things, which tend to the publick Benefit and Defence of the Civil Society or Commonweal, and which being for the Benefit of the King *de jure*, and his Liege People, it is to be morally supposed they have his tacit Consent for what they do, as long as it tends only to this end: yet does it not therefore follow, that the bare Protection of this usurped Government, and the Enjoyment of the common Privileges of a Subject, should give such a King *de facto*, or Government, a Right of exacting an Oath of Allegiance to them; since I have already proved, from the true signification of being true and faithful, as also from the legal signification of the word Allegiance, that no true Subject can lawfully take it, without renouncing his Allegiance to his natural Prince: seeing not only a bare Neutrality or Obedience in not transgressing the Laws is thereby required of them, but also an active Obedience and Duty in performing the King *de facto's* Commands, and the defending him, whenever there is occasion, in his ill-gotten Power.

But the only Difficulty being, how a strict Observation of this Oath can consist with the Quiet and Happiness of the Subjects, whenever a new Oath of Allegiance comes to be imposed by the King *de facto*, since the Subjects may be all ruined that do not take it, if it be once offered to them; this Difficulty might be easily removed, if the whole Nation would stick firmly to the Duty required by their former Oath of Allegiance, and resolve never to take a new one: for then the Numbers of the Refusers would be so great, as that they would be more than could be made to suffer for their refusing it. I speak of such Subjects as are in our Case, and who are not forced by a Prince, who either has the Right or Power of a Conqueror, to compel them by force; and therefore your Instances of the Subjects of the King of *Spain*, or of the Duke of *Holstein*, who were conquered, or else as good as conquered by the Power of *France* and *Denmark*, signify nothing: whereas we are only overawed by an inconsiderable number of *Dutch* and *Germans*, and might set our selves free, if we would give but a vigorous Effort towards it. For that K. *William* is a Conqueror over the whole Nation, I think you dare not affirm; and unless he were so, he could challenge no Right to our Allegiance as such: and therefore I must still believe, that the Oath of Allegiance I have taken to King *James*, and his Heirs is perpetual, unless you could show me that their Right is determined, which you have not done by any thing you have yet said. I cannot therefore be of your Opinion, that the bare Protection of an usurped Power can justify our swearing Allegiance to it, either in Law or Conscience; for then all Men had been obliged to pay as firm an Allegiance to the *Rump Parliament*, and also to *Oliver Cromwel*, as to King *William* and Queen *Mary*; since both the former protected the People as much in their Religion, Civil Liberties, and Properties, as the latter I fear will ever do.

And that the bare Protection of a Government does not give it an absolute Right to the Allegiance of all those that enjoy their Protection, I think may be sufficiently proved from the Instance of a *Frenchman*, or any other Foreigner; who tho by his living here, and enjoying the common Protection of the Government, I grant he is obliged to be obedient to its Laws, and is not to act or conspire against it; yet this does not discharge him from his natural Allegiance which he still owes to his former Prince, so as to do any thing which may prejudice that Allegiance he owes to him, either by conspiring or fighting against him. And this was solemnly declared to be Law by the Judges of the *King's Bench*, in the case of Dr. *Story*, in the 13th year of Queen *Elizabeth*: He being a violent Papist, fled over into *Flanders* to the Duke of *Alva*, and there conspiring with him to invade this Kingdom, and being afterwards taken and brought over Prisoner, was tried as a Subject of *England*, tho he refused to plead as such, because he said he had sworn Allegiance to the King of *Spain*; notwithstanding which Plea he was executed as a Traitor, as you will find at large in my Lord Chief Justice *Dyer's* Reports: which Judgment is also confirmed by the Lord Chief Justice *Coke* in *Calvin's* Case, where he expressly asserts, "That a Person born under the Dominion of the King of *England*, owes
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“ him perpetual Faith and Allegiance, and this by virtue of the Law of Nature, because *Jura naturalia sunt immutabilia*.” From whence will also appear the Falsity of your Conclusion, that Oaths of Allegiance extend no further than to the King in possession, or to that Government to which we do at present owe our common Protection, and therefore that our Law has a much higher Consideration of this inherent Allegiance that belongs to a King *de jure* as to his particular Person, and his Heirs: So that it cannot be indifferently paid to any body else, who can, by seizing of the Government, force us to owe our Protection to them; which appears by what my Lord *Coke* hath also laid down, to have been agreed by all the Judges upon this Oath of Allegiance in *Calvin's Case*, as I cited it to you at the beginning of this Evening's Conversation. So that I confess I much wonder, considering what he has there said, how he can so positively maintain as he doth (in the place you have also quoted) that Allegiance is due to the King *de facto*, and not to him *de jure*, whilst the former is possessed of the Crown: since it seems a flat Contradiction to me, how a Subject is to pay Allegiance, as long as he lives, to the King and his Heirs, of Life and Member; that is, until the letting out of the last Drop of our dearest Heart's Blood, and that in all places whatsoever; and yet that this Obligation should last no longer, than whilst the King *de jure* is in actual possession of the Throne. And therefore I think I have very good reason to maintain, that we are still obliged by our former Oath of Allegiance to King *James*, so as not to take a new one to any other King, unless we had been constrained to it by an absolute Conquest, which you your self will not maintain to be our present Case.

F. I confess you have now argued this Point very stiffly, and I think what you have said carries with it the greatest appearance both of Law and Reason of any thing you have yet urged upon this Subject; and therefore if I can fairly answer it, I hope you will come over to my Opinion, and take the Oath which is now required of you. In the first place therefore, I cannot deny, that all you have said concerning a natural Allegiance due by Birth to the King, is true according to our Laws; and I do my self allow the thing, *viz.* That Allegiance is due to him, tho not for the Reasons upon which our Lawyers have founded it, but upon those I have already given. And therefore granting it was held to be Law in the Case of Dr. *Story*, that his Plea of becoming a Subject to the King of *Spain* was over-ruled by the Judges, and he refusing to make any other Plea, was condemned upon a *nihil dicit*; yet this being only a penal Law, I think obliges the Subject to the Penalty if he be taken, but does not oblige him in Conscience never to change his Prince or the Government he was born under without their Consent, let his Circumstances become ever so uneasy under it. And that this is so, I need go no further than the late Case of the *French Refugees*, who though they are strictly commanded by their King not to stir out of *France*, whatsoever Persecution they may suffer; yet I think no Man of Sense can blame them, if, being persecuted there, they remove themselves into other Countries, and become perfectly naturalized Subjects or Denizens, at least in that Government whereunto they remove. And this is so known a thing, that no Casuist, as I know of, thinks it a Sin in such Subjects of *England*, as finding it for their advantage, go over into another Country, to settle and make their Fortunes, and are there naturalized, or made free Denizens in those Kingdoms or Commonwealths whereunto they remove; nor are such Persons obliged in Conscience to return home upon the Command or Summons of that Prince, to whom you suppose them to be Subjects by Birth. Nor is your Argument at all convincing, because a Man owes a Duty to his Parents by the Law of Nature, and by being born their Child, that therefore the Subjection to the Prince, under whose Government he is born, must be alike perpetual, since the ground upon which you found this Consequence is altogether false; for I have already proved, at the first Meeting we had to discourse of these Matters, that a Man's being begotten, and bred up by his Parents, does not make him become their Subject or Servant in the State of Nature as long as he lives, so that he may never withdraw himself from their Subjection without their leave.

But in the next place, I think I am as little mistaken in my Notion of Allegiance, which I suppose every Person, who is a true and perfect Subject of the

the Government, owes to the King or Sovereign Power thereof: for tho I grant there is a great deal of Difference between that imperfect Allegiance, or bare Submission, which every Foreigner owes the King or Government under which he resides, and that more perfect Allegiance which every Subject owes the King, who enjoys all the Rights and Privileges of a true *Englishman*; yet to let you see that this Distinction proceeds not from the bare Protection of his Person and Goods by the Government under which he lives, but by his being naturalized, and becoming thereby a perfect Member of this Civil Society, it is plain from your own showing: and therefore whosoever not only enjoys the common Protection of an Inhabitant, but also all the Rights and Privileges of a true *English* Subject, is bound to swear Allegiance, if required, to the King or Queen *de facto*, without enquiring into their Right or Title: For if they are Strangers, or have never taken any Oath of Allegiance before, they cannot be under any former Oath. And as for natural Allegiance, I have already proved it to be a mere legal Notion, and this Allegiance I have also proved to be due to the King and Queen *de facto*, not only from the Opinion of the Judges in *Bagot's Case*, but also from my Lord *Coke's* Interpretation of the Statute of Treason; which tho you suppose to be contradictory to what he had before laid down in *Calvin's Case*, yet if you please better to consider of it, you will find it not to be so: for tho it is true the Judges do there assert, " That the Obligation of the Oath of Allegiance is indefinite and without Limitation, as being made to the King and his right Heirs; and also that it extends to the venturing of Life and Members, and to the letting out of the last Drop of our Blood: " yet is this still to be understood only of such a one and his Heirs, who still continues to be King in a legal Sense, which can be only he who is King for the time being, as he is stiled in this Statute of the 11th of *Henry VII.* and only during the time that he continues in actual possession of the Throne. And therefore the word *King* or *Majesty* being indefinite, and without having any respect to his Title, whether by Descent of Blood, or else by his being crowned and recognized by Parliament, it is no Contradiction to suppose this Allegiance is only due to the King in this limited sense, according to the Statute of *Henry VII.* Where pray take notice, that I have made this Allegiance to be only due to Kings and Queens *de facto*, because they only are within the Intent and Letter of this Statute, as also of that of Treason, according to the legal Government of this Nation by the fundamental Laws thereof, and can no ways be extended to any other Powers under other Titles, such as the Rump Parliament under the Title of a Commonwealth, or *Oliver Cromwel* under that of a Protector; who tho they took upon them to protect the People after a sort in their Lives and Estates, yet since it was not according to the true Rights and Privileges of the Subjects of this Nation, which they highly violated, and in some points quite destroyed; and that they also took upon them this Protection without the free Consent of the lawful Representatives of the Nation assembled in a full and lawful Parliament; I can by no means allow them to have given the People such a true and legal Protection as the Law requires to constitute a true and perfect Allegiance, or can make them to be the supreme Power of the Nation, and within the Statute of the 25th of *Edward III.* So that this Statute, and that of the 11th of *Henry VII.* must be our Rules in this Case.

But I cannot but smile at the Expedient you have found out to hinder the People of this Nation from being ruined, if they do not take the Oath of Allegiance to their Majesties, which is by a general and absolute Refusal of it; and this you suppose, if unanimously agreed on, would hinder them from suffering any thing by this their Refusal. And you think they are also strong enough to oppose it, because the King has only a small Army of Foreigners, which he still maintains here; and this you think may lawfully be done, because their Majesties do not claim by Conquest, but by the Election of the Convention, and therefore that this Case does not come up to that of the Subjects of *Flanders* and *Holstein*: in which Argument I doubt not but to shew, that every one of your Suppositions are false. For tho the Nation is not conquered, yet it is certain that all private Subjects are under as great a Restraint by this legal change of the Government, as if they were in the power of a Conqueror: for to resist would be equally fatal to them in both Cases, and there is
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no visible Power nor Authority that can defend them against the present Power, in case they should go about to refuse this Oath when it is offered to them. And therefore tho I grant the King's standing Army of Foreigners is but small, in comparison of the whole Nation, since he does not intend to keep us in subjection by force, but only to hinder any sudden Insurrection of those of your Party; yet besides all this, God be thanked, their Majesties have the main Body of the common People of the Nation on their side, who are sufficiently able to destroy all those that shall go about to make those vigorous Efforts you so much desire. So that you have nothing else to plead, but that which I hope never to see, that we are not under a Force, because we still entirely enjoy our Religion, Liberties, and Properties. And tho the King, out of his great Goodness and Modesty, did not think fit to insist upon his Title by Conquest over King *James* and his Adherents; yet I think I have already proved at our last Meeting, that he may as justly claim by Conquest, as his Namesake *William I.* since he came not over to conquer the Nation, but to vindicate his former Right; and after his Conquest of King *Harold*, could have no just Title to the Crown, till he had been solemnly elected and recognized for King, according to the Laws and Customs used at that time. And why the Nation might not do the same thing now for their Deliverer from King *James's* arbitrary Power, I should be glad if you could give me a sufficient Reason. But if the whole Nation should have been as peevish and discontented as those of your Principles, and should not look upon the King as their lawful Sovereign, because he does not claim by Conquest, it would be altogether as grateful and reasonable, as if a Woman having, by the assistance of an honest Gentleman, been rescued from being ravished, and he afterwards falling in love with her himself, should court her to marry her; she should refuse him, because he had not ravished her when he might, or at least have forced her to marry him whether she would or no: apply this Comparison to the Case in dispute, and see if it does not hold. And therefore I must still maintain that the parallel Cases of the Subjects of *Flanders* and *Holstein* are good as to those of your Opinion, who have no notion how Allegiance can be transferred, unless by perfect Force and Conquest; since if you please to desire it, I'll undertake the Government shall seize upon your Estates, and imprison your Persons, till you do take the Oaths, as the Kings of *France* and *Denmark* did those who refused to swear Allegiance to them.

M. I have heard you a great while upon this Subject, and I wish I could say I were fully satisfied with your Reasons; however, since it grows late, I will not dispute this Point any farther, but will take time to consider what you have now urged: only I must needs tell you thus much, I could wish that Princes could find some other way of securing themselves of their Subjects Fidelity, besides this Test of an Oath of Allegiance, which serves as a Snare to many pious and conscientious Men; whereas those of none, or at least of very loose Principles, will swallow any Oath that can be imposed upon them. And I am sorry to see so many of those, who I know are in their Hearts of my Principles, prevailed upon to take it, not out of Conscience, but mere worldly Interest and Advantage, and whom I am satisfied will never serve this Government the more heartily or sincerely for having taken it. And therefore to tell you the truth, I begin very much to incline to *Grotius's* Opinion, that promissory Oaths are absolutely unlawful: yet considering the several Changes and Turns of Government which we have seen in *England* for above forty years last past, I am so far for the Good and Happiness of my Country, as to think every true *Englishman* obliged so far to obey the Powers in being, as may tend to the common Good and Defence of the Nation, by the Administration of Justice between Man and Man, and in the Punishment of Offenders, and for Defence of the Nation against foreign Enemies. But sure, methinks, this might very well be done without the imposing any Oath at all, either upon Magistrates or Officers, and much less upon ordinary Subjects; since if they are persuaded in their Consciences that it is lawful to act under this present Government, let them do it if they will: but as for the common People, I confess they are so stupid, that they have seldom any other measures of the Justice or Lawfulness of any Government or Prince's Title, than the Ease or Advantage they find by it. And therefore upon the whole matter,

matter, I think it were much better for the Government, in the unsettled State it is in, to follow *Cromwel's* Example, and to impose no Oaths of Allegiance at all, since the Government may be as secure without it, as (for all that I can see) they can be with it; and as it is now managed, I see little it can serve for, but to distinguish and divide us one from another. And besides its being a Snare to the Consciences of so many that take it, it is like also to prove the Ruin of divers of our Bishops and other honest Men, both of the Clergy and Laity, who will certainly rather lose their Dignities and Employments than ever take it; which will also cause a great Schism in the Church, as I doubt you will find when it is too late: whereas if these Men might have held their Bishopricks, and all other Preferments and Offices, without having this Oath imposed upon them, I doubt not but they would serve both the Church and State in their several Stations, according to their Duties, and as far as lawfully they could.

E. I cannot deny but you have spoken very honestly, and like a good *Englishman* in many things you have now said, in case your Intentions towards the present Government were real, as your words are fair; and therefore I cannot wonder that you who have been formerly a stiff Asserter of the Lawfulness and Necessity of the Oath of Allegiance, should now be for taking it quite away, since it grows too hard for your self, and those of your Opinion to digest: as if to oblige Subjects to defend their Governors, were a necessary Security for your rightful Princes, but were unnecessary for those whom you shall think fit to suppose to be Usurpers. And tho I confess I must very much pity the overnice Principles of those of your way, who are truly peaceable and conscientious, and are like to be ruined by their Refusal of it; yet for all that, I very much doubt whether it would be for the best to take this Oath quite away, since it would make a strange Alteration in the Government to admit all Persons into ordinary Charges, much less into Employments of Trust and Profit, without taking any Oath at all. Your only Objections against it are these: (1.) That you doubt that it is unlawful to impose promissory Oaths; and the next is, that it will not perform the end for which it is intended, *viz.* to distinguish those who will serve the Government faithfully, and those that will not; since you confess that a great many, who are not at all satisfied in their Consciences, will, for Interest, not only hold their old Employments, but will also take new ones under it, which I grant is not to be avoided, if Men will venture to be damned. So likewise on the other side, I must tell you, that the quite taking away the Oath of Allegiance will not at all mend the matter, but make it much worse; since then, not only those whose Consciences will give them leave to take the Oaths, but also those who think they ought not to take them, will be alike capable of Employments: and when they are in them, tho I grant they may be both alike free to act as they please against the present Government, and for restoring of King *James*, yet I must needs tell you for all that, that I am much more fearful of the Ill-will or Malice of those who think themselves obliged in Conscience to overthrow the present Settlement, and who continue stiff to their first Principles, than of those who will so far comply with this present Government and their own Interest, as to take the new Oath of Allegiance in whatever sense they please. For I am very well satisfied that such Men, tho they are not so right for the Government as I could wish them, yet either Fear of Punishment, or else the Consideration of their own Self-interest, will always make them desire to retain those Employments they have already got, since they can never be assured of bettering their Condition under King *James* and a Popish Government, should he ever return; whereas those that are bigotted to Principles, will always think it their Duty, by virtue of this Notion of a natural Allegiance, as well as their former Oath, to endeavour to restore him by all the ways and means that can ever lie in their power. But as for the Unlawfulness of a promissory Oath, since you your self speak doubtfully of it, and few Casuists, except *Grotius*, have been of that Opinion; I think it is not safe to quit our antient Laws, which particularly prescribe, that not only all Magistrates and Officers, but also all other of the King's Subjects, should take the old Oath of Fidelity or Allegiance (as we now stile it) in the Court-Leet, or Sheriff's Torne, when they come to the Age of fourteen years: which

which Oath (as appears by what we can find of it in *Edward the Confessor's*, and King *William's* Laws, which we have already recited; as also you may find it in Sir *H. Spelman's* Glossary, *Tit. Fidelitas*) was made to the King, as their Liege Lord, of Life and Limb, and which implies an active Obedience to defend him against all his Enemies, without any exception of such as may claim by Inheritance, or Right of Blood.

Now this being so, I cannot be persuaded that the Government ought to quit any lawful means whereby it may preserve it self, and distinguish those who would really serve it from those who will not: and tho perhaps the Government may find it self mistaken in its account in some Men, whose Consciences are large enough to swallow any Oath whatsoever; yet I think I may still safely maintain, that it is in less danger from a few such Libertines, than from those of your Opinion, who would not only keep their Places under this Government, but will also continue in a perfect State of War against it, let them be treated ever so kindly. And therefore with respect to those dreadful Consequences of Schisms in the Church, and the lessening and dividing our Party; as to the former, we must run the hazard of it, since it was never heard of that the Bishops, who are in some respects temporal Barons, held their Bishopricks under any King since the Conquest, without owning his Authority; and I can also shew you, that the King and Parliament have either actually deprived, or else declared such Bishops Traitors to the Government. So that if any such Schism be made, it will proceed from a Scandal unjustly taken by some scrupulous Men, and not by the Government. And as for the other Inconvenience, I think it is much safer for the Government to employ fewer Men, than by not knowing who are Friends or Foes, to trust all promiscuously; tho perhaps, notwithstanding their utmost care, some Men of little or no Consciences will have Places in this as well as they have had formerly: which can by no other means be prevented, as I know of, but by chusing Men of honest Principles, and sober Morals, and of a quite different Interest to those employed in the two last Reigns. And therefore I am so far from taking away the present Oath of Allegiance, that I rather wish that there were a new one more strict and full than the present, ordained to be taken by all those who shall take Offices, and Employments of Trust or Profit, whereby they should not only declare their present Majesties to be true and lawful King and Queen of this Realm, but also that they will defend them against all their Enemies, King *James* himself not excepted.

M. I confess I cannot expect so great a Tenderneſs from this Government, which has been introduced by so much Artifice, that they should absolutely take away all Oaths of Allegiance whatsoever, since I doubt not but it will assume to it self all those Advantages which any former usurped Power could pretend to; yet this much I must needs tell you as a Friend, the depriving those Bishops and dignified Clergymen who shall refuse this new Oath, will be highly ungrateful, since many of them have been as violent Opposers of Popery and arbitrary Government as any Men in *England*, as appears by their late Petition to the King. If therefore the Archbishop of *Canterbury*, and those other Bishops I know to be so averse to this Oath, should be deprived upon the refusal of it, since it will be done uncanonically, by the temporal Power of an Act of this Convention, without the Sentence of the two Houses of Convocation, I doubt that it will be thought by many to be a sufficient Cause of departing from the present Church-Communion, and of setting up distinct Congregations by those who will be deprived, and turned out of their Livings for refusing this Oath; and what the Consequence of that may prove, God knows.

But whereas you think this present new Oath not full enough, and therefore wish there were another made, declaring the present King and Queen to be lawfully and rightfully so, &c. since this would amount to as good as an Oath of Abjuration of King *James* and his Title, I doubt it were better let alone; for I do not think the present Government will get any thing by it, since the intent of the Oath you propose can only serve either to gain the present Government more new Friends, or else to fix the old ones faster to it, or else to discover secret Enemies. And if I can prove it will not serve for any of these three ends, I suppose you will grant that it were better to let it alone.

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Now that it will be so far from gaining it more Friends, that it will rather serve to drive away a great many from it, is apparent; since many Men are now in Offices and Employments, who think they may lawfully take this new Oath of Allegiance, as long as the present King and Queen are not therein declared to be lawfully and rightfully so, and I believe may serve them faithfully enough in their several Stations; who if they should come to be put to it, to declare and swear that they were rightful and lawful King and Queen, would rather lose their places than take it. Neither will it fix those that are for this Government faster to it, since those that are zealous for it, will be so whether they took any Oath or not. And I have already proved, that by the word Allegiance in this Oath, it is implied, that the present King and Queen are to be defended as lawfully so by the Swearer to it; which is the main reason that I, and those of my Opinion, can by no means think it lawful to take it. Nor lastly, will it discover any secret Enemies to your Government, since those, who being rightly instructed in the true sense of this Oath, and what is thereby required, shall notwithstanding take it against their Conscience, will I doubt take any Oath whatever the Convention shall think fit to impose; and nothing but the fear of losing their present Employments, or else the desire of getting new ones, could have made them take the Oath as it is, and to my knowledge it hath been taken by many now in Places much against their own Judgment, and I doubt the Conviction of their Consciences too.

I speak this only in relation to some of loose Principles: but as to my self, and many more of my Acquaintance who refuse this Oath, we should be so far from taking any place of Trust under this Government, that we should not do it, tho no Oath were at all required of us; since I think it not only wicked and dishonourable for any honest Man to serve a Party, only to watch an opportunity to betray it: but I also believe my self obliged by my former Oaths, as well as the Duty of a natural Allegiance which I owe the King and his right Heirs, not to serve those whom we look upon as Usurpers of their just Rights.

But if you would also have this new Oath to be an absolute Abjuration of the King and his Title, it will not only be unjust, but impossible; since who can tell but either by the Help of a foreign Force, or the general Consent of the Nation, tired out by a long expensive War, either his Majesty or the Prince of *Wales* may be again placed upon the Throne? and then sure, whenever they shall call a Parliament to recognize his Title, they will be, even according to your own Hypothesis, more lawful and rightful Kings than King *William* and Queen *Mary*, since they will not be only Kings *de facto*, but *de jure* too. And therefore I believe it was out of this Consideration, that in all those long and various Contests which so often happen'd between Competitors for the Crown, they never presumed to propose to the Parliament the passing any Act to impose an Oath to abjure the Title or Person of the rival Prince. Thus it was in all the long Wars between King *Stephen* and *Maud* the Empress, as also between the two Houses of *York* and *Lancaster*; each of whom, as they prevailed in their turns, were very well contented to make the Subjects take the ordinary Oath of Fidelity to themselves, without abjuring each other's Title: and even in the later times of the Rump-Parliament, when the most violent and hot-headed Commonwealths-Men would have imposed an Oath of Abjuration of *Charles Stuart*, and all his Family, (as they then termed his late Majesty) the most wise and moderate Men among them, such as *Lenthall* their Speaker, and others, stiffly opposed it, saying it would be a fighting against Providence to take an Oath never to own his Majesty for their King, if once he should come in again without their Assistance. And I think there is as much, if not more reason now against such an Oath of Abjuration, as ever there was then.

F. I cannot deny but you have spoken like an honest Man, in absolutely refusing to act under this Government, tho without an Oath, unless you could be satisfied of the Lawfulness of the Powers to whom it is taken: and I must acknowledge that you therein act with much more Sincerity and Honour than divers of your Party, who tho they have been, and are of your Opinion as to the Justice of King *James's* Title, yet think they may take this Oath well enough in that looser and more qualified Sense you grant they put upon it. And therefore to answer in the first place what you have said against the imposing any more explicit or stricter Oath of Allegiance than what is already appointed,

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tho I think I can very well answer all the Arguments you have now brought against it; yet to let you see I am a fair Adversary, I will shew you how far I agree with you, and wherein I must differ from you.

In the first place therefore let me tell you, that you very much mistake me, if you believe that by this new Oath I propose, I do design an express Abjuration of King *James*, or the Prince of *Wales*, in case that King should ever happen to recover the Throne, and call a Parliament who shall again recognize him for lawful King, and the Prince for the right and undoubted Heir of the Crown. I am too sensible of the frequent Alterations that have happen'd in this Nation, even to desire or propose any such thing, since a Man may as well abjure the having a Fever or the Small-Pox; Change of Government, and consequently our Submission to it whenever it happens, being no more in our power to prevent, than the having those Diseases. All therefore that I intend by a stricter and more explicate Oath of Allegiance, is only for Men who shall undertake any Employments of Trust and Consequence, either Spiritual, Civil, or Military in the Commonwealth; since I grant the Oath, as it is now worded, may be sufficient for all ordinary Subjects, from whom a passive Submission and true Obedience is a sufficient Performance of their Duty: but as for all others that either now have, or expect to enjoy Places of Trust, I could wish a stricter Oath were enjoin'd, asserting their present Majesties to be lawful and rightful King and Queen of this Kingdom, and that the Taker will defend them in the present Possession of it, to the utmost of his power, against all Persons whatsoever, King *James* and the Prince of *Wales* not excepted. And this I must think necessary, not only from that low and qualified sense of this Oath, which I gave at the beginning of this Night's Conversation, and in which sense you cannot deny but that many, if not the greater part of those who still hold such Employments, have lately taken it; and as long as they do so, how they can ever think themselves obliged to defend their Majesties against King *James*, nay, or any *French* or Popish Forces that shall act by his Commission, I cannot understand: for since they now look upon the present King and Queen to have no other Right to the Crown than what their bare Power and present Possession of it gives them, no wonder if such Men take the first opportunity to revolt, and join with King *James* as soon as ever he lands with an Army, or appears upon our Coasts with a Fleet formidable enough to oppose ours; and they must also (if they are true to their Principles) in the mean time do all they can to protect and indemnify those, who, being of tender Consciences, cannot stretch it as far as themselves, and who underhand do act as far as they dare for King *James's* Interest. And tho it is true you have very solidly proved, not only as a Civilian, but like a Lawyer, that the word *Allegiance*, inserted in this Oath, does of its own nature imply not only that the King or Queen to whom it is taken ought to be rightly and lawfully so, but that more than a bare Neutrality, viz. a real and vigorous Defence of them and their Right against all their Enemies, is required and imply'd by it; and that is one great reason why you say you cannot take it. Now tho I confess the Reasons you have given are very weighty and convincing, yet since the words are in themselves too general, and doubtful for every Person that takes or holds such Offices or Employments of Trust, to understand it in that sense, I could be glad there were another more plain and explicate Oath to be administer'd to those who expect to keep or hold such Employments; since the present Government cannot well be safe without it, as long as such Persons are employed, who can take the Oath with a mental Reservation of serving King *James*, as soon as they safely may by virtue of that former Oath of Allegiance they have taken to him.

This being the case, I shall now answer all the Objections you have brought against it, which indeed are rather framed to keep those Men in Places, that they may serve your Designs whenever they are able, than to do any service to tender Consciences. First then I think I may maintain, that such an Oath will, notwithstanding what you have now said, have contrary Effects than what you are pleased to allow: for in the first place, it will gain the present Government more new Friends amongst these Neuters, who steer their Allegiance to it only from its present Settlement, and the hopes of its Continuance, when they find that none can be employed in places of publick Trust, who will not take an Oath to acknowledge their present Majesties to be lawful and right-

ful King and Queen, and who will also swear to defend their just Right, which will for the most part put places of Trust into their hands, who will think themselves obliged faithfully to perform what they have sworn. Secondly, it will also fix the old Friends of this Government faster to it, when they see none but themselves, or those who will really come into the Government upon their Principles, admitted to such Places of Profit and Trust; and whoever will take this Oath, are to be presumed to take it willingly and wittingly, and understanding what they do, since the words will be of themselves so plain and evident, that they will admit none of those loose and doubtful Senses in which so many have taken the present Oath of Allegiance. But your main Objection against this is, that a new Oath will not discover secret Enemies to the Government, because that most of the same Persons that have taken the former Oath, will take any other that can be required of them; which I suppose is not so, since you your self do grant that such an Oath would be a Snare to a great many, who if it were not for that, would serve this Government faithfully enough, that is to say, as long as there is no necessity of shewing their Good-will to King *James*, or no opportunity given of returning to their former Allegiance to him with safety to themselves: and you your self cannot deny but, according to their Principles, they must needs perform it whenever they think they may. Now certainly it were better to be rid of such false Friends (if it were possible to discover them) by such an Oath, than to keep them where they are, only to take an opportunity not only of doing a mischief, but of serving this Government very carelessly and lukewarmly, whilst they are in those places they enjoy; as also of favouring and assisting those that are the declared Assertors of King *James's* Right as far as they dare. So that then all the Dispute remains about those, who having Consciences large enough to swallow any Oath whatever, provided it will suit with their present Advantage; no Oath can tie them, or serve to discover their private Sentiments: as I cannot deny but that there are too many Men of such large Consciences as you describe, and could heartily wish they were fewer. Now tho I grant an Oath alone will not keep them out, yet it might be in great part prevented, if the King would take a true Character of the Men fit for publick Employment from those about him, of whose Worth and former Integrity he is already fully satisfied. But admitting some such Men should get into places, and consequently when they are in, manage things for their own Advantage, (that is, vilely and corruptly;) yet even these will not prove half so fatal to the Government as those Men of half Consciences, who think they may take this Oath in their own sense, and for their own present advantage; and also believe it no Breach of it to assist King *James* whenever safely they may, because they hold their present Oath to be only temporary, but their former to have a perpetual Obligation upon them: whereas those of no Principles never espouse any Interest longer than it serves their own turns. So that as long as they can make their Fortunes under this Government, they will never desire to change it for another, in which they cannot but expect a much less free Enjoyment of their Liberties and Properties, which are things that all Men (as well those who have no Principles, as well as those that have) desire to enjoy. And lastly, some even of these Men that have been formerly notorious Assertors of and advanced in the Arbitrary Government of King *James*, out of shame as well as fear of the loss of their Credits with those of their own Party (which they are not assured but may again prevail) will stick to take this stricter Oath, tho they do not that which is now enjoined, since they can find an Evasion for the one, but will scarce be able to do it for the other.

M. But pray tell me, will not this new Oath, declaring King *William* and Queen *Mary* to be lawful and rightful King and Queen of this Realm, and that all Men that take it shall assist them against their Enemies, prove an imply'd Oath of Abjuration of King *James*, tho not in express Words? And you have not yet shewed me that such an Oath hath ever been administered during all the various Contests that have been for the Crown since the Conquest.

F. I allow that such an Oath would be a virtual and implied Abjuration of King *James's* present Claim to the Crown, and would also oblige all Persons to fight against him, and hinder his regaining it; which tho I grant to be the design

sign of it, yet would not such an Oath oblige us at all to abjure the obeying King *James*, should he ever by an irresistible Providence be again set over us; since it is not abjuring of a future, but a present Right, which I now contend for. And that the antient Oath of Fidelity and Allegiance (as it is now called) was of the like nature, and taken in the same sense with this I propose, I shall shew you from the Form of the Oath of Fidelity, which all Freemen were to take at fourteen Years of Age, as appears by King *William* the First's Law, which I have so often cited; "Whereby all Freemen were to Cap. 5.
 " affirm upon Oath, that within the Realm and without, they will be true
 " and faithful to King *William* their Lord, and preserve his Lands and Honour
 " with all Fidelity, together with his Person, and defend them against all his
 " Enemies." So likewise in the antient Oath of Homage, which was taken by all the Earls, Barons, and Tenants *in capite* in *England* at the Coronation of our Kings, were these words; " I *N. N.* become your Liegeman of *Vid. Spelman's*
 " Life and Limb, and earthly Honour, and Faith and Troth to you shall bear *Gloss. f. 23. H.*
 " to live and die, so help me God." And in the latter Oath of Fidelity or Allegiance, which Sir *H. Spelman* gives us out of the Customary of *Normandy*, the words were much the same, only the Person is there sworn to be true and faithful to the King and his Heirs (which they were not before *Edward* the First's time;) and also that they would hear of no Evil or Damage against them, which they would not hinder to their power. Now pray tell me, were not all these Oaths taken to the King for the time being, as lawful and rightful King? and since they were thereby to yield him Life and Limb, that is, were to defend him with their Lives against all his Enemies, then certainly all others who might pretend to, or claim the Crown, were included within this number. And tho' it is true in these antient Oaths there is no swearing to the present King, as lawful and rightful King, yet these words were needless in that Age, when (as I have proved at our last Meeting) there was no difference between a King *de jure*, and one *de facto*; and whoever was crowned King, and elected or recognized by the Great Council of the Kingdom, was looked upon as lawful and rightful King, and as such, was to be defended against all his Enemies: so that till that Distinction was broached, that there might be a King *de facto* different from the King *de jure*, (which I have proved was not elder than *Edward* the Fourth's Reign) there was no need of any mention of such words in the Oath of Allegiance as lawful King, and lawful Heirs, which are first found in the Oaths of Allegiance and Supremacy prescribed by the Statutes of Queen *Elizabeth* and King *James*: in the latter of which (it is needless to recite it *verbatim*) it is first sworn, That the King's Majesty is lawful and rightful King; secondly, there is an express Abjuration of the pretended Authority of the Bishop of *Rome*; which shews that the Abjuration of the Temporal as well as Spiritual Right of a foreign Prince (who claims it ever since King *John*'s Resignation) is no new Invention: and lastly, there is an express Abjuration or Engagement to defend the King's Person to the utmost of the Swearer's power against all Conspiracies and Attempts whatsoever. And why the same words may not be inserted into this new Oath, as well as it was in those, I can see no reason, since they are only declarative, and pursuant to the late Act of the Convention, whereby after the Declaration of the Rights and Liberties of the Subjects, King *William* and Queen *Mary* are declared, " That they were, and of right ought to be by the Laws of this
 " Realm, our Sovereign Liege Lord and Lady, and King and Queen of *Eng-*
 " *land*, &c."

M. Well, it is late, and besides to no purpose to argue this point any longer, since it concerns not me nor any of my Principles what new Oaths you make and impose upon those, whose Consciences will never permit them to take them: what I have said was only to shew you the Folly and Weakness of such Oaths, and consequently that they can be subservient to no other end than a Renewal and Aggravation of the Sin of Perjury among us, which God forgive this sinful Nation, among the many crying Sins it now groans under. Yet give me leave still to mind you, that you have not given any Answer to the Objection I have made concerning the Schism that is like to follow, from the depriving of all such Bishops and Clergy that shall refuse to take the new Oath by such a time; which Deprivation being uncanonically ordained by the mere
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Lay-Power of the Convention, without the Authority of a Convocation or Synod, such Proceedings are sufficient cause for all of our way to break off all Church-Communion with you, as soon as the Archbishop of *Canterbury* and those other Bishops shall happen to be deprived, and new ones put in their places; since all Church-Communion wholly depends upon the Lawfulness of the Bishops, who are the supreme Pastors of our Church.

F. I forgot to say any thing of this, because I said so much concerning the new Oath I propos'd as fit to be taken by those in places of Trust; but since you desire it, I shall say somewhat, tho not so large as I could speak upon this Subject. First, I must tell you, it is altogether a new Notion, and contrary to the Doctrine of the Church of *England*, whereby it is declared that the Kings of this Realm have the same Power with Persons in the Church, as the Kings of *Judah* and *Israel* had among the *Jews*; therefore you must either depart from the Doctrine of this Canon, or else the King and Parliament (who are certainly as much the supreme Power of the Nation, as the Kings of *Judah* were to that of the *Jews*) may as well deprive the Archbishop of *Canterbury* (for example) for Treason, or Disobedience to the Government, as *Solomon* did *Abiathar* for anointing his Brother *Adonijah* King. And besides this, I can shew you many Examples of the like Power exercised by the *Roman* and *Greek* Emperors, in depriving and banishing not only Bishops, but Patriarchs, for Matters of State, without any Sentence or Judgment of a Synod, or General Council of other Bishops. If your Doctrine were true, the poor *Greek* Church would be in a sad Condition, and all her Members in a perpetual Schism for some Ages past, since there have been scarce any Canonical Elections or Deprivations of the Patriarchs of any of the great Sees, viz. *Constantinople*, *Antioch*, and *Alexandria*, but they are all nominated, and put in and out at the Grand Signior's, nay Visier's will and pleasure; as any Man, who will but peruse Sir *Paul Ricaut's* Account of the *Greek* Church, may easily see.

But indeed you fall into this Error for want of considering the Original of Bishopricks in *England*, and the true Meaning of this intended Deprivation: for pray take notice, that tho Episcopacy was settled in *England* in the time of the *Britons*, yet all the Sees, and Jurisdiction of the Bishops of this Realm, in respect of such and such Diocesses, have been wholly owing to the Bounty of our Kings, and the Authority of our Great Councils, which were also confirmed by the Pope's Bulls; and since the Reformation, to the Authority of the King and Parliament, as were all the Bishopricks erected in *Henry* the Eighth's Reign. So that the Bishops mere Spiritual Power of Ordaining, Excommunicating, &c. may be derived immediately from Christ if you please, yet the Exercise thereof, as limited and appointed to this or that Precinct or See, is as mere a temporal Institution as that of Parishes, which was not introduced till long after Christianity was settled in this Island. So that the Exercise of this Ecclesiastical Jurisdiction within the See of *Canterbury* (for example) being a Civil Institution, it hath antiently belonged to supreme Powers not only to confer this Power (as appears by their antient Investitures of our Bishops *per Baculum & Annulum*) but also to take it away for Treason or Disobedience against the State; since the King and Parliament do not pretend to deprive them of their Spiritual Character or Episcopal Orders, but only of their Right to exercise it within such Sees or Diocesses. Thus, although the Archbishop of *York*, and the Bishops of *London* and *Winchester*, with the rest of the Popish Bishops, were deprived by Act of Parliament in the first of *Elizabeth* for not taking the Oath of Supremacy; the Queen and Parliament never took upon them to degrade those Bishops of their Episcopal Orders, but only to forbid their acting as Bishops in their former respective Diocesses. And therefore I doubt not but notwithstanding this Deprivation, those Bishops might (if they had pleased) have ordained Priests, and confirmed Children, and that such Ordinations and Confirmations would have been good even in our Protestant Church, if such Priests or Children had afterwards turned Protestants; since it is very well known that the Church of *England* owns the Orders of the Church of *Rome* to be valid, which is more than we do for the Ordinations of mere Presbyters coming from those Protestant Countries where there are no Bishops at all: the like I may say for their Confirmations too.

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But pray, Sir, consider how upon your Principles this Schism can be so universal as to influence and involve all *England* in it; for if the Archbishop of *York* (for example) will rather take this Oath than suffer Deprivation, and that the rest of the Bishops of his Province should be of the same mind (as I am credibly informed they will) pray tell me how the People of that Province (being a distinct Church, or Body Ecclesiastical, from that of *Canterbury*, as to all spiritual Matters, as having a distinct Convocation of their own) can ever be involved in this Schism by the Deprivation of the Archbishop and Bishops of the Province of *Canterbury*?

And pray also tell me, in the next place, how all the Members of the two Universities can ever be involved in this intended Schism, since they owe no Canonical Obedience to the Archbishops of *Canterbury* or *York*, nor to any other Bishop, but only to their Chancellor, and the Vice Chancellor as his Deputy, who exercise all Ecclesiastical Jurisdiction within the said Universities; and therefore their Church-Communion cannot depend upon the Canonical or Un-canonical Deprivation of any Bishops in *England*. I desire you to consider these things as a Canon-Lawyer, and give me your Answer, if you can, against the next time we meet, and then tell me whether the Causes of this threatened Schism be so just and apparent, that it is like to involve so many of the wisest and most considerate of the Clergy and Laity into open Separation from the Church, as you suppose it will. Not but that I will grant there be many of the Clergy of this Opinion, who, as well out of Conscience as for their own Interest, will be contented to set up and encourage such a Separation, thereby to make themselves Heads of separate Congregations, when they shall be deprived of their present Benefices and Employments, upon their refusal of this Oath.

M. I must confess I never heard so much said upon this Head before, and if you could make out to me all the Matters of Fact you have now instanced in, I know not but that I may come over to your Opinion; tho let me tell you, this is the first time that ever you could shew me that any Bishops were deprived in *England* by the mere Lay-Authority of the King, and a Great Council or Convention of the Laity, whilst they continued of the same Church-Communion with those Bishops: for as to your Instance of the Popish Bishops deprived by Parliament in the Reign of Queen *Elizabeth*, I doubt you will find it does not come up to the point in question, since the Queen and Parliament having then newly declared themselves Protestants, did not own them for true and Orthodox Bishops, and consequently thought they might justly depart from their Communion, and upon the same account might deprive them, and the Queen might then nominate others of her own Religion in their places.

F. I cannot but differ from you in the Matter of Fact, as you now relate it; for Queen *Elizabeth* and the Parliament were, when they made this Act, so far from being separated from the outward Communion of the Church of *Rome*, that Mass was then said, and the *Romish* Priests still continued in all the Parishes and Churches of *England*; and yet they still maintained an outward Communion, tho their Bishops were deprived by the Civil Power, and others ordained in their stead. So that it is plain the Papists themselves had then no Notion of this new Cause of Schism, by reason of their Bishops being un-canonically deprived; nor indeed can we well vindicate the Honour or Legality of our Reformation, if the Protestant Bishops who succeeded in the places of those who were thus deprived by Act of Parliament, could not be Canonical, because their Predecessors deprived by the Lay-Power were still alive.

Vid. Dr. Burnet's History of the Reformation, Part 2.

And to shew you that the King and Parliament have deprived even Bishops of their own Communion, and that such Deprivations have been held good, and that the King hath nominated new Bishops upon the Vacancy, you may see in Dr. Burnet's *History of the Reformation*, and in the Appendix to it; where you P. 148. will find a memorable Act of Parliament of the 25th of *Henry* the VIIIth (before his Departure from his Obedience to the See of *Rome*) whereby Cardinal *Campegio*, and *Hieronimo de Ghinicci* were deprived of the Bishopricks of *Salisbury* and *Worcester*, which they had held for near twenty Years, and *Campegio* had without doubt been installed in it when he was in *England*.

P. 123.

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The Act it self being so remarkable, I shall give you some Passages out of it *verbatim*: First the Preamble sets forth, " That whereas before this time " the Church of *England*, by the King's most noble Progenitors, and the Nobles of the same, hath been founded, ordained, and established in the Estate " and Degree of Prelacy, Dignities, and other Promotions spiritual, &c." (which sufficiently confirms what I but now asserted, that all the Bishopricks were founded by our Kings, with the Consent of their Grand Councils or Parliaments;) and then it proceeds to recite, That whereas all Persons promoted to Ecclesiastical Benefices ought to reside within the Realm, for preaching the Laws of Almighty God, and keeping Hospitality; and since these Prelates had not observed these things, but lived at *Rome*, and carried the Revenues of their Bishopricks out of the Kingdom, contrary to the Intention of the Founders, and to the great prejudice of the Realm, &c. in consideration whereof, it is enacted by the Authority of this present Parliament, " That " the said two Sees, and Bishopricks of *Salisbury* and *Worcester*, and either of " them, henceforth shall be taken, reputed, and accounted in the Law to be " void, vacant, and utterly destitute of any Incumbent or Prelate." And then follows a Clause, enabling the King, his Heirs, and Successors, to nominate and appoint Successors (being the Natives of this Realm) to the said Sees, and the King did nominate Successors according to the said Act.

But admit this was the first time that ever it had been thus practised, yet if it were then reasonable, and done upon good grounds, I cannot see but when the Necessity of the Church and State require it, and that the Clergy in Convocation are so wilful and wedded to some old false Notions, as not to consult the Peace and Safety of the Church and Kingdom; why the King and Queen (who are acknowledged to be supreme over Ecclesiastical as well as Temporal Persons) may not, together with the two Houses of Parliament, make the like Law now, as was done in the first of Queen *Elizabeth*, for a less matter: for none of those Popish Bishops, tho they believed Queen *Elizabeth* to have no better than a Parliament-Title to the Crown, yet ever denied her to be their lawful and rightful Queen, only they would not own her Supremacy in spiritual Matters.

So leaving the farther Discussion of this Point to those who better understand it, I would gladly know of you what you intend to do, and what you would have us do, who are like to be made Deputy-Lieutenants and Justices of Peace: for if, as you your self allow, there be a necessity that some Civil Government be maintained during King *James's* Absence, I desire to know of you how it can be managed, and who shall manage it, in case all the Gentlemen of *England* were of your Principle, and should positively refuse the Oath of Allegiance to their present Majesties. For if King *James* be ever so much our lawful King, it is not now possible for us to be governed by him since he is gone, and God knows whether ever he may return again. Since then you cannot have him if you would, and that there is a necessity we should be governed by some body; and since it is also as certain, that those who actually govern us will exact this or the like Oaths of Allegiance from us, as were due to their Predecessors, and that no Man must expect to enjoy or execute any Place or Office, not only of Profit, but of Burden and Charge, for the necessary execution of Justice, and the maintenance of Civil Government (without which we cannot live or subsist) without taking this new Oath of Allegiance, as the only means to qualify them for it: If then the end, *viz.* Civil Government, be absolutely necessary, and the taking of this Oath is the only means allowed of to qualify Men for it; this seems as evident to me, that taking of this Oath is not only justifiable by Law, but by Reason and good Conscience, since it is done for the highest and noblest end, *viz.* the publick Good of the whole Nation or Commonwealth, which you grant cannot subsist without some kind of Civil Government amongst us.

M. I will say something in answer to what you have now alledged concerning the necessity of taking of the Oath, in order to the maintenance of some Civil Government, without which I grant the King's good Subjects cannot subsist till his return; since I confess this is the strongest Argument you have yet brought, all I can say to it at present, is, that if all your Country Gentlemen, and all the Lawyers in *England*, would be so firm in their Loyalty to his

his Majesty, as unanimously to declare that they cannot take this Oath with a safe Conscience; the Consequence then would be, that either the present usurped Power must be forced to give up the Government to the right Owner, or else they must at least desist from pressing this Oath upon you.

F. You know well enough this is altogether a vain Supposition, since you cannot but be sensible that their Majesties have not only a sufficient Force both of native *Englishmen* and Foreigners on their side, who can force those, who should make any opposition, to the taking it; but that there are also many Fanaticks and Commonwealthsmen, who not looking upon themselves at all obliged by your Notions of natural Allegiance, and the Obligations of any former Oath of Allegiance, will get into all the Offices and Employments of the Kingdom, to the great Prejudice and Destruction, not only of the Church, but the Monarchy it self, which is as yet preserved, tho the Person that administered it is altered. So that it would conduce nothing to King *James's* Affairs, if all the Gentry and Lawyers of the Kingdom should go about to refuse this Oath; which, as I have already proved, they are also obliged to take by the Law of the Land, and also that greater Law of prosecuting the publick Good of, the Nation, to the utmost of their power.

M. Well, since I cannot expect so great firmness of Mind and Courage from your Country-Gentlemen, and especially the Lawyers, who have been always but too forward to comply with all Governments, how unlawful soever; and since you, who think that you may lawfully take this Oath, not only by the Law of the Land, which you have interpreted to countenance your Opinion, but also from a higher and nobler Law, *viz.* that of the common Good of the Nation, or Civil Society; which I grant must be maintained during the King's Absence, since you say there is a necessity for it: tho I am not fully satisfied of the Lawfulness of it so far as to take it my self, yet will I not absolutely condemn you, or any other sincere and honest Men, who do only take it out of a good intent to maintain some Civil Government amongst us, and also to the keeping out the Fanaticks from having any share in it: and I hope the Government will excuse me, if my Conscience will not give me leave to take it my self, since there are enough of you who are free to do it without us. So that if I cannot keep that small Employment I have, without taking this new Oath, I will freely give it up, since I am not satisfied in my Conscience of the Lawfulness of it; and whatsoever is not of Faith, is Sin, as the Apostle has truly defined it.

F. I confess you speak very honestly and charitably in this matter, and I could wish all those of your Opinion had the like Moderation, and that they would not condemn of wilful Perjury so many good Bishops, Noblemen, Gentlemen, and others, both of the Clergy and Laity, who have been persuaded that they might take this Oath with a safe Conscience; and therefore pray, however we differ in Opinion about these matters, let us maintain the same Friendship for each other as we had before.

M. Sir, I readily embrace so fair and kind an Offer; and as I hope you will do me what kind Offices you can whilst you continue to act under this Government, so will I promise to do the same for you, whenever the King shall come to be restored to his Throne again.

F. I willingly and thankfully accept the Proposal of the Continuance of your Friendship, since I look upon your dissenting from me, not to proceed from any Willfulness or Obstinacy, but out of a tender Conscience, and too great and high a sense of your Duty, which I must still confess are Errors on the right hand: and therefore now taking my leave of you, shall only desire you to believe me your real Friend and humble Servant.

M. I hope you think I have the same Esteem for you, and therefore must always own my self yours.



Bibliotheca Politica.

DIALOGUE XIV.

That the Arraigning and Murder of King *Charles I.* can by no means be justified by the Proceedings of the Convention-Parliament against King *James II.* upon his Abdication; the Grounds and Manner thereof being wholly different. Proved by an exact Relation of the Beginning, Progress, and Issue of the late Civil War.

M.  Am come this Evening to discourse with you about somewhat that *I* have heard to-day, which has very much raised my Spleen against all the complying Clergy, who justify this Revolution; and it satisfies me, that most of them are no better than downright Hypocrites and Turncoats.

F. Pray, Sir, be pleased to tell me what it is that has put you into this Ferment.

M. I shall, and am glad to find you so willing to hear me. You must know then, that this being the 30th of *January*, the Anniversary of the Martyrdom of that great and pious Prince, who fell on this day by the bloody hands of his rebellious Subjects, I was resolved to go and hear one of our celebrated Preachers in the City, to observe how he would manage his Point; (which I must tell you I thought was a nice and ticklish Subject) since I foresaw, that as he must necessarily condemn that horrid and barbarous Fact, so he would likewise at the same time justify this Revolution, which was begun and carried on upon the same Principles, tho not by the same Persons. And I was not deceived in my Expectations; for my City-Doctor was shrewdly put to it, and like an Ass mumbling a Thistle, tho he condemned the Fact of this Day with great Warmth and Bitterness of Spirit, yet when he came to handle those good old Church-of-England Doctrines of *Passive-Obedience* and *Non-Resistance*, he touched them very gingerly, because he was afraid they would go near to prick his Chops: therefore being sensible that this Revolution was not to be justified upon those Terms, he fell into a strange fantastical Hypothesis, of *God's ways in disposing of Kingdoms*; and that the Prince of *Orange*, by the wonderful Success of his Arms against King *James*, was, by a kind of mixed Right of Conquest and Election, become our King, and by God's Providence wonderfully declaring it self in his favour, he might, nay ought to be lawfully owned and recognized as such by all the Subjects of this Kingdom: but yet that it was still downright Rebellion before God for any private Persons to
conspire

conspire or make war against the King, which I thought very strange Doctrine: Since the Prince of *Orange* set forth in his Declaration (which we have no reason to disbelieve) that he was invited over by divers of the Bishops, Peers, and Gentlemen of the Kingdom; which was so far made good, that one of the first, and divers of the second and third Orders, either declared for him, or actually went in to him upon his Landing, besides those who came over with him in a military Posture. But how they could be justified by this Doctor's Principles, let those look to it whom it concerns.

But I am sure his whole Sermon was so far from edifying, that it gave great occasion of Scandal and Offence to all the honest and judicious part of his Auditory: for if God's Providence must be brought in to justify, at every turn, a Rebellion or Revolution (as it is now more softly worded) I cannot see why the Murder of King *Charles I.* may not also be justified upon those very Principles; it being sufficiently known to all that lived in those times, that *Cromwel* and the *Rump* appealed to their strange and wonderful Successes and Victories over the King, and God's delivering him into their hands (all which in their Cant they called *Providences*) as an Indication that God had designed him to be taken off in the manner he was; and that their wicked, illegal, and tyrannical Power was that which was thereby sanctified and ordained by God, and to be submitted to and obeyed, according to the Apostle's Precept, *Let every Soul be subject to the higher Powers, the Powers that be* Rom. 13. 1, 2. *are ordained of God, &c.* So that by such a plain and manifest wresting of Scripture, the most open and barefaced Rebellions and Usurpations, when they prove successful enough to carry the outward shew of a Civil Government, must presently be owned as God's Ordinances: and if this must pass for sound Doctrine, I think it were better wholly to lay aside the Observance of this Day, tho appointed by Act of Parliament, than thus to mock God, and at the same time condemn an Action, when done by those we call by the hard names of *Rumpers*, *Commonwealthsmen*, and *Fanatics*; and yet in the same breath justify the very like Practices of those who now call themselves Asserters of the Monarchy, and seeming Members of the Church of *England*, who have solemnly declared King *James* to have abdicated the Throne, upon the Breaches of I know not what original Contract, and fundamental Laws; and it thereby becoming vacant, have placed the Prince of *Orange* and his Princess on the Throne. And the long Parliament, after their execrable Murder of King *Charles*, might, with the like Right and Justice, have proclaimed *Cromwel* (the chief of his Enemies and Judges) for lawful King, as he set up himself afterwards for Protector by the like providential Title.

And tho, I confess, the Prince of *Orange* hath not been so cruel to his Uncle and Father-in-law, as to imprison him and take away his Life, but gave him an opportunity to make his escape; yet whether that did not more proceed from Interest, than either Mercy or Good-nature, I may have some reason to doubt: because had the Prince either imprisoned him, or put him to death, it would have proved disadvantageous to his Interest, and turned to his Prejudice, even among the common People of the Nation; and besides, would have prevented the notion of the King's voluntary Abdication of the Government, which has been since so greedily swallowed by an hypocritical, or at least an unthinking Party of the House of Commons. And how they would have proceeded against his Person (had he stay'd here) God knows: for they might with the same Justice have taken away his Life, as declared him to have abdicated; that is, (as you your self confessed at our last Meeting) forfeited his Crown. So that to conclude, I see no Difference but the changing of the Names of the Persons, that can justify this Revolution from the same Imputations of Treason and Rebellion, as the Murder of King *Charles I.* for tho his Son is still (God be praised) alive in *France*, yet the Party you have so much vindicated have done all they can to destroy his politick Person, by declaring him actually deprived of all Sovereign or Regal Power as lawful King of *England*.

F. You have made a sharp Discourse against the Murder of King *Charles I.* and Abdication of his Son King *James II.* in great part of which, as I shall not oppose you, so, I hope, the unwary and indiscreet handling of this Subject by some of our City-Preachers, will not prejudice you against the late

Revolution, and placing the Prince of *Orange* on the Throne. For I agree with you, that a temporal Success or Victory of any Party of Men, nay of a whole Nation against an Enemy, either foreign or domestick, ought not to be urged as an evident Token of God's approving the Cause they were engaged in; being sensible, that this Argument has been made use of not only by *Cromwel* and his long Parliament, both before and after the King's Murder, and is indeed the common Topick and Refuge of all unjust Force and Violence committed in the World, and serves the *Turks* at this day for their main Argument of the Truth of their Religion, and the Justice of their Arms against the Christians: and therefore before ever we give a Judgment concerning God's Allowance of such Actions (tho ever so amazing and successful) we ought to distinguish between God's permissive, and his declared and express Will or Providence; without the former of which, no human Actions, whether good or bad, could ever be brought about: since tho he has so wisely contrived all the Affairs of the World, that even the wicked Actions of Men do turn to his own Glory, and the common Good of Mankind, yet his direct and declared Will ought never to be made use of as an Argument, but where the Scriptures so declare it, or that the apparent Justice and Merits of the Cause may make us presume, that God, by his granting Success, does likewise allow the Justice of the Cause.

I have not therefore, in whatsoever I did or shall say on this Subject, drawn any Argument for the present Government from that head, nor found their Majesties Right to the Throne on the fallacious Topick of Success. But as for your main Objection, and which so much scandalizes a prejudiced and inconsiderate Party of our Church, that this Revolution (if adhered to) will serve to justify the deposing and murdering of King *Charles I.* I utterly deny; since there are a great many, and those very material, Differences between that Fact, and the Abdication of the late King.

I shall therefore proceed to shew you these grand Differences between those two Transactions; which I shall do, First, by enquiring into the Beginning and Original of the Disputes between King *Charles* and his Parliaments, and then comparing them with those which lately happened between the late King *James II.* and his Parliament, and his Proceedings after its Dissolution: So that if we look back upon the Actions of both these Princes, and the Proceedings of the Parliament and People of *England* in opposition to them, we shall find them vastly different. First, As to the Original of them, King *Charles* was left involved in a War with *Spain* by his Father, and being not long after unluckily engaged in another with *France*, and denied any Assistance in three successive Parliaments, I grant he was forced, for the carrying on of these Wars, to take very illegal Courses by Loans, and Privy Seals, and other ways to raise Money; and being so often disappointed of his Expectations of receiving any Benefit by Parliaments, it was no wonder if that Dislike was afterwards, by some evil Counsellors about him (who feared to be called to an account for what they had acted contrary to Law) heightened to a perfect Aversion to them, and he put upon to raise Ship-money by the bare Opinion of the major part of the Judges, contrary to Law. Yet to say truth, this Money was not vainly squandered away, but really laid out for the use of the Navy, in buying in of Naval Stores, and building of Men of War, the *Royal Sovereign* being made out of that Money. But when the necessity of the King's Affairs, upon the breaking out of the *Scottish* War, obliged him to call a Parliament, he then offered, if he might have a sufficient Assistance against them, to have redressed all those Grievances; and had certainly done it, had not the House of Commons, by denying the King that reasonable Aid he required, obliged him to dissolve them. But when the long Parliament in 1640. came to sit, the King having then, upon the Earl of *Strafford's* and Archbishop *Laud's* being impeached and committed to the *Tower*, and the Lord Keeper *Finch* and Secretary *Windebank's* withdrawing themselves beyond Sea, altered his Measures as well as his Counsellors, he condescended to pass whatever Laws the Parliament thought fit to offer, to secure the Nation against those just Fears of Popery and arbitrary Government, which then so much perplexed them: So that after all these unparallel'd Condescensions, they had no just reason longer to continue their Jealousies and Discontents, unless they could wrest from the King

King the whole Power of the *Militia*, which gave the first occasion to that unhappy Civil War.

M. I grant what you say to be in great part true ; and yet upon your Principles this will not do the business : for if the King, upon any wilful breach of the *Original Contract* (as you call it) and obstinately persisting in it, may be resisted by the People, and declar'd to have *abdicated* the Government, upon such wilful Invasions of our fundamental Laws and Liberties ; (King *Charles I.* having also knowingly persisted in those Violations after his granting the *Petition of Right* so solemnly, in his third Parliament ; and after many Petitions of divers of his Subjects against those Oppositions, yet they were still continued :) sure he might with as much Law and Justice have been resisted, and have had Arms taken up against him by the People of *England*, as have been lately against his Son : And upon King *Charles's* refusal to redress them, might also have been declar'd by the Parliament to have abdicated the Kingdom, by renouncing the lawful way of Government of it, according to your supposed fundamental Constitutions thereof. And yet for all that, the Long-Parliament it self, tho they declar'd that the King's setting up his Standard at *Nottingham* was an actual making War upon the People of *England* in their Representatives ; yet neither then, nor in the very heat of this War did they ever arrive to that degree of Impudence, as to declare the King to have broken his *Original Contract*, and thereby to have *abdicated* the Government ; but still continued their Addresses to him for Peace, if they might have had it upon their own Terms : nor yet when they had voted no more Addresses to the King, did they ever declare that he had *forfeited* the Crown by his wilful Breach of the Laws, and making War upon his People. These things, I say, were never done by them, till *Cromwell* and the Army, with the Independent Party in the House, first declar'd at *St. Albans*, That the King, by beginning a War upon the People, had committed Treason against them. But your *Convention* has quite outstript the old *Presbyterians*, and have not only laid aside the King as they did, but have also taken from him the very Title of King, and have declar'd him to have *abdicated* the Government ; which Act, I doubt, can never be justified by your Notion of making him forfeit the Throne by a tyrannical Administration, and so to depose himself.

F. I am very sorry to see you so hard put to it, as to find no way to justify the late King's Miscarriages, but by comparing them with those of his Father's Reign ; which tho I grant them to be very great, and in some things worse than those of his Son's, yet were they chiefly at the beginning of his Reign, and indeed before he had granted the *Petition of Right*, when he had in truth very much violated the Laws of the Kingdom, by exacting *illegal Loans*, and *Imprisoning* those that refus'd to pay them ; as also by levying *Soldiers*, and requiring the Counties to furnish the Charges of *Coat and Conduct-Money* for them, contrary to Law. I grant also that his appointing Commissioners to try, condemn and execute Soldiers by Martial Law in time of Peace, was against the known Laws of the Land, as also quartering them in private Houses, whether the Owners would or not ; and then his imprisoning divers People of Quality without any Cause shewn, or Time limited, and without suffering them to be delivered by *Habeas Corpus*, as by Law they ought. All which Grievances being briefly summed up in the *Petition of Right*, were (tho not without some difficulty) at last redress'd by the King, in that remarkable Answer, I have already cited, *Soit Droit fait come il est désiré*. And altho there may be a great deal said by way of Excuse in the King's behalf, for those Illegal and Arbitrary Proceedings ; as that he then found himself engag'd in a War with the *Emperor* and House of *Austria* about the *Palatinate*, and that at the desire of the Parliament ; and notwithstanding when he could receive no assistance from them in the three first Parliaments of his Reign, he was forc'd to make use of those exorbitant Methods to raise Money to carry on an unsuccessful War against *Spain* and the *Emperor*, in order to restore the Prince *Elect* for his Brother-in-law to his Inheritance : tho who were the Cause of this Necessity, whether the King or the House of Commons, I shall not now dispute. But whoever was in the fault, it was sufficient that the King redress'd all those Grievances in the third Parliament of his Reign. And yet even before that time, I affirm there was no just Cause for the People to take up Arms, since (as I said at first) those

Oppressions

Oppressions were either but light, or else fell only upon some Trading Men; and I have already laid it down for a Rule, "That it is never lawful to resist the King's Commands by Force, but when they strike at the very Root of the Constitution, and become not only general, but insupportable by the Subjects, and that there are no hopes left of redress by Parliament; which I do not see was the Case at that time, seeing the King at last did remedy all those Grievances by a Parliament."

M. I grant it might be as you say; but did not the Nation quickly fall into fresh Discontents by the King's exacting of *Tonnage* and *Poundage* from the Merchants, before those Duties had been new granted and confirmed by Act of Parliament? And also, by his clapping up divers of them for refusing to pay it? Nay, did he not also, some time after this, by the Opinions of almost all his Judges, and Advice of his Privy Council, levy *Ship-Money* upon the whole Kingdom by his own Proclamation, and committed divers Gentlemen to Prison that refused to pay it, nor would admit of any *Habeas Corpus* to release them? I shall omit divers other things of less moment, such as his *dispensing* with the Statutes against Popish *Priests* and *Jesuits*, and his releasing and pardoning of them, when they were condemn'd: as also his making several Popishly inclin'd Lord-Lieutenants, Deputy-Lieutenants, and Justices of the Peace; his turning out the Lord Chief-Justice *Crew*, because he declar'd himself against the *Loan*; and imprisoning the Refusers of it during pleasure; and would also have turn'd out the Lord Chief Baron *Walter* upon the same account, had he not held his Place by Patent, *Quamdiu bene se gesserit*; and yet nevertheless he was forbidden sitting in that Court any more: which things are but the same in effect, as the *Convention* have put into their late Declaration against the present King; and therefore I must say again, that the one is no more to be defended than the other. But if these things did not deserve any *Resistance*, or *Abdication* of the Father; why should the like, nay less, matters have that tragical effect upon the Son?

F. I should not have desir'd to enter upon this odious Comparison, or to rake into the Ashes of the Dead; yet, since you will put me upon it, give me leave to tell you my Opinion freely, of this part of the Reign of King *Charles I.* that those Violations upon the Laws you mention, were so great and general, that had they been as obstinately persisted in, when the Parliaments met in 1640, and 41, I doubt not but they might have produc'd (and that lawfully) the like Effects, as his Son's Miscarriages have since brought upon him, by his going away, rather than he would suffer them to be redress'd by a Free Parliament. But his Father was better advis'd, and either redress'd those Grievances and Oppressions the Nation complain'd of before those Parliaments sat, or else yielded to the Parliament's Declarations against them, and gave up the Offenders to be punish'd according to Law. Thus for example, before the Parliament sat in 1640. he releas'd all those Gentlemen and Merchants that were in Prison, for not paying *Ship-Money*, *Tonnage* and *Poundage*, &c. And as for *Ship-Money*, he acquiesced with the Judgment of both Houses, who condemn'd it as illegal; and left all the Judges that gave their Opinions for it, to the Judgment of the Parliament. He also sign'd a Bill to take away *Tonnage* and *Poundage*; as also another to attain the Earl of *Strafford* for endeavouring to introduce an Arbitrary Government, and subvert the Laws of the Kingdom. He also pass'd several other Acts for the taking away of the *Star-Chamber*, and *High-Commission Courts*, and even for taking away the Votes of the Bishops in the House of Peers: And last of all, he pass'd that unparallel'd Act I now mention'd, of making the Parliament not capable of being adjourn'd, prorogu'd, or dissolv'd, without their own Consents: so that he omitted nothing (as I know of) that was desir'd of him for the redress of all those Grievances that the Nation then justly complain'd of; those Persons who were accounted the Authors of them, being either executed, imprisoned and fined; or else sav'd themselves by Flight.

. But as for what you say about that King's pardoning Popish *Priests*, and suspending the Laws against *Roman Catholics*, and turning out of Judges; they were nothing like what his Son King *James* hath lately done in that kind. For in the first place, his Father never did more in pardoning *Priests*, than what Queen *Elizabeth*, and King *James I.* had often done before; who seldom or never

never executed any, only for being *Priests*, unless they had also been found guilty of some other Treason: Nor do I know of any Law there then was in force against *Roman Catholicks*, the Execution whereof was openly suspended by any Proclamation; tho I confess those Justices of Peace, who were round most active in putting such Laws in execution against *Papists*, were commonly put out of Commission: but as for the turning out of Judges, you can instance only in one who was so turned out, because he would not agree to the *Loan*; and as for the other, you your self grant it was only offer'd at, but could not be done: But what is this to the turning out of three, or four, or five Judges at a time, because they would not consent to give their Opinions as the Court would have them, even in matters of the highest Importance; and then putting *Papists*, or else Men of the loosest Consciences, and least Law, in their Places, as was lately done? What is the pardoning of a few *Priests*, and the silent exempting some *Roman Catholicks* from the Penalties of the Laws made against them, in comparison of a *general and avow'd Suspension*, not only of all Laws against them, but also of all those concerning Religion whatsoever? This sure was never practis'd by any King of *England* before our Times.

To conclude: Let us now suppose that in the Year 1641. the King, instead of redressing all those Grievances and Violations of the Laws we have now mention'd, should have withdrawn himself into *Ireland*, and there have join'd himself with the *Irish Rebels*, and by the assistance of the King of *France*, had made war upon this Kingdom; declaring that he would never put up his Sword, till he had made himself absolute Master of all our Laws and Liberties: What think you the Parliament which was then sitting would have done in this Case? Can you believe they would have sat still, without passing a Vote against the King's Arbitrary and Tyrannical Proceedings? No certainly, they would never have stopped, till they had declared him, by thus becoming a publick Enemy to his People, to have *abdicated*, or *forfeited* all his Right to the Government of this Kingdom; or else, I think, they could by no ways have secured the safety of it.

M. But pray let me ask you one Question more, before you proceed farther; since you have not yet answer'd my Objection: Why did not the Parliament then do so, when the King did afterwards actually declare War against them?

F. There were several good Reasons for that: As First, Because they could not but know in their own Consciences, that the King, before his departure from *London*, had already given them all the Security, against those Oppressions and Violations that had been formerly committed, as they themselves could desire. And Secondly, Because they knew what they insisted upon with so much heat, to wit, the disposing of the *Militia* of the Kingdom, had been in the King's and his Predecessors disposal, from time beyond Memory; so that there needed an express Act of Parliament to take it from him by Law, (as they themselves at first acknowledg'd:) And it was nothing but the Tumults that were raised in *London* by the Rabble's coming down to petition the two Houses, and by their violent insisting to have the whole Power of the *Militia* out of his hands (which was indeed to take from him the chief Regal Power, that of the Sword) could have thus forced him from the Parliament, and to take up Arms, when he had neither Men nor Mony to pay them, the Parliament having stopped his Revenues, ever since his going to *Hull*. And therefore, seeing they had no other Cause, but their own Fears and Jealousies to justify what they did; they had no way to do that, but by laying all the fault upon the King's evil Counsellors, who had carried him away from his Parliament, to incite him to make war against it; to remove him from whom, and to bring him back to his Parliament, they made the chiefest pretence for the War: yet notwithstanding there were still left in the House a great many honest well-meaning Men, call'd *Puritans* (the Name of *Presbyterian* being not yet in fashion;) and who, tho they were against all Arbitrary Proceedings, yet nevertheless loved Kingly Government, and did not desire his Majesty's Ruin, so long as there were any hopes left of coming to an Agreement with him, upon such Terms as they thought would best suit with the *Presbyterian* Discipline, and the Rights and Liberties of the People: and these were for ending all Differences by a fair Treaty, and afterwards voted the King's Concessions at the *Isle of Wight* to be satisfactory;

satisfactory ; and being for this alone driven out of the House by *Cromwell*, and his *Independent-Faction*, were call'd the excluded Members, and were the very Men, who being afterwards brought again into the House by General *Monk*, join'd with him in voting for a Free Parliament, or Convention, which (you know) recall'd and restor'd the King and Royal Family.

M. I cannot deny, but you have given me a fair Account of these Transactions ; yet methinks, according to your Principles, I can see no reason why the People might not have risen up in Arms against the King in that long Interval of Parliaments, when he levied *Ship-Money*, and (as you own) did so many illegal things, and that to force him whether he would or not, to call a Parliament, to redress those Oppressions and Grievances the Nation then lay under : and yet you cannot shew me any Man in *England*, who had either the Will or Interest to raise a Rebellion against the King, during those eleven Years that those things were transacted ; so well were the People satisfied with his Majesty's Government, notwithstanding all the secret Murmuring and Discontents of some leading and factious Men against his Proceedings. And therefore, when the *Scots* first invaded *England* upon the account of the New Service-Book, I cannot find but the major part of our Nobility and Gentry were well enough satisfied with the King's Proceedings, and serv'd him with great Courage and Fidelity at his first Expedition against the *Scots*.

E. If this be so, you your self have given me a sufficient Reason, why neither the People, nor any part of them, ought then to have taken up Arms against the King ; for if the Major part were so well satisfied, as you make them to be, it was argu that the Oppressions were either not general, or else but very light, and easy to be borne ; and therefore (no doubt) they ought to wait the King's time when he would call a Parliament, rather than involve the Nation in a bloody Civil War, which I never suppose lawful, but as the last and only Remedy, (as our Case lately was.) And besides all this, you know very well, that *Ship-Money* (which was the chiefest and most illegal of these Oppressions) was declar'd to be according to Law by all the Judges of *England* in the *Exchequer-Chamber*, except two, who I grant argued against it, with greater Law and Reason, than the Majority of them could produce on the other side, as appears by their Arguments, since printed in *Dr. Franklin's Annals* : yet, however, so long as the Judges are look'd upon as the Interpreters and Declarers of what is Law in doubtful Cases in the Intervals of Parliament ; I told you at our last Meeting, that whatever is done under such a Colour of Law, supported by their Determinations rightly given, ought not to be opposed or resisted by the Subjects, till their Judgment be revers'd and declar'd illegal by Parliament.

But indeed you are somewhat mistaken in matter of Fact : for tho I admit that *Ship-Money* was a very light Tax in compariton of what we have felt since, and that most of those Imprisonments you complain of, fell only upon some particular Gentlemen and Merchants, who refus'd to pay *Ship-Money*, and *Tonnage* and *Poundage* ; yet was the Nation very highly dissatisfy'd for all that, when the *Scots* came in, especially after the Parliament (in 1640.) was dissolv'd, because they would not agree to the King's demands, of *fifteen* intire Subsidies for the *Scottish* War : and tho 'tis true, the Nobility and Gentry attended the King in the first Expedition against the *Scots* with a seeming Alacrity, as they were by their Tenures bound to do, and that there was also a mercenary Army raised upon Pay ; yet it is very plain, by the great unwillingness of the generality of the Soldiers, as well as Commanders, to fight against the *Scots*, as also by the Intercession of the major part of the *English* Lords for Peace, and the mighty Joy which appeared at the Pacification ; I say, it is very plain upon these Considerations, that most of the *English* Nobility and Gentry were not well satisfied with that War, because they very well knew, That when once the *Scots* were wholly subdued and brought under, the King might then take upon him to do even what he pleas'd with his *English* Subjects.

M. I shall not farther dispute what you say concerning this matter ; but desire you only to consider, That according to your own Argument, if the Opinion of the major part of the twelve Judges, in the Intervals of Parliament, be such a Declaration of Law to the People (how illegal soever it might be in it self) as they ought by no means to gainsay or resist ; then by a parity
of

of Reason, the taking up Arms by those Noblemen and Gentlemen who joined with the Prince of *Orange* is not to be justified, seeing that the King had the Judgment of most of his twelve Judges on his side for dispensing with the Act concerning the Oaths and Test.

F. I own what you have now said would have been close and home to the Case, had this been so declared by their Judgments upon a solemn Argument of the point in the *Exchequer-Chamber*, as had been done in the Case of *Ship-Mony*: but it was so far otherwise in this, that you may very well remember the King would not permit the Judges so much as to argue the Case, or give their Opinions in publick, but only in private in *Serjeant's-Inn*, and that too after they had been closetted by my Lord Chancellor; and those were turned out that would not be brought over to his Opinion, and such put into their places as promised to comply. And besides all this, the King's Declaration of Indulgence was not a Dispensation in one particular Case, or Act of Parliament alone, but an actual Suspension of above forty Penal Statutes at once concerning Matters of Religion, which (as I have already proved) was as good as a downright Abrogation of them; and such a Suspension had been before declared unlawful in the Case of *Thomas and Sorvil*, in the Lord Chief Justice *Vaughan's* Reports, which I mentioned at our last Meeting. Now if you can shew me any thing like this done by King *Charles* the First in the business of *Ship-Mony*, I grant your Objection to be good, otherwise not.

M. But pray give me leave to urge this matter a little farther concerning the Lawfulness of the War made by the Parliament against *Charles* the First, in defence (as they pretended) of their Religion and Civil Liberties, against the King's Usurpations upon both; for which they had a very specious pretence, since the King had left the Parliament, not upon any direct or open Force or Compulsion, but only upon a bare Surmise, follow'd by a Declaration, that he thought he could not be safe any longer at *London*, for fear of the Tumults of the Rabble. Now when the Parliament had upon this declared, That his Majesty's Departure and continuing from his Parliament, notwithstanding their humble Petitions for his Return, was an Obstruction to the Affairs of *Ireland*; and that those who advised him to go away were Enemies to the Peace of the Kingdom, and justly suspected to be Favourers of the *Irish* Rebellion: and farther, upon his going to *Hull*, and his hostile Preparations against that place, the two Houses had in a Declaration, published for their Justification, that all that Sir *John Hotham* had acted in that Affair, had been done by their Order; and that the King's Proceedings were unsuitable to his Declarations of never having an intention to make war against the Parliament: And farther, upon his Majesty's issuing out his Commissions of *Array*, they voted them contrary to Law, and against the Liberty and Property of the Subject; and that all those that acted in putting those Commissions in execution, were Disturbers of the Peace of the Kingdom, &c. and farther declared it lawful to resist by force of Arms all those Noblemen and Gentlemen who had endeavour'd to put it in execution: And lastly, his setting up his Standard at *Nottingham*, and marching with an Army towards *London*, was an evident Declaration of his actual beginning a War against them; whom then could the Nation better believe in this case, than their Representatives in Parliament?

So that if you will suppose our present King *James* to have forfeited or abdicated the Kingdom, because the Convention hath lately declared so, you ought then to quit your old Cavalier Principles, and to own the late War against King *Charles* the First, being only defensive on the Parliament-side, to have been just and lawful by like parity of Reason, as you said; for surely a Declaration of both Houses of Parliament, called by the King's Writ, ought to be looked upon as of much greater Authority than that of a Convention, who have met and acted without any legal Authority to call them together.

F. You have indeed played the part of a stout Advocate for the Presbyterian Party in the Long Parliament, which I know you urge against me only as *Argumentum ad hominem*, whereby you would prove me an Apostate from my former Principles; but I hope, for all that, so far to vindicate the late Proceedings of the Convention, as to shew that they have done, and declared nothing in their Vote or Declaration concerning King *James*, but what may very well be justified upon my old Cavalier Principles.

In order to which, pray take notice, first of all, that I lay down as a ground of what I have to say on this Subject, That the greatest part of the Nobility and Gentry, who took up Arms on the behalf of King *Charles* against the Long Parliament, never believed any absolute irresistible Power in the King, or those commissioned by him, if they acted against the known Laws of the Land; for this indeed is a new Doctrine, preached and set up since that time only to serve a turn. Secondly, That the Nobility, Gentry, and People of *England*, who understood any thing of the Grounds of this Quarrel between the King and the two Houses, by fighting on the King's side, and supporting his Cause, never intended thereby to make him an Arbitrary Monarch, and to give him a power over the Persons, Estates, and Liberties of the People of this Kingdom, but only (as his Majesty himself set forth in all his Declarations) to defend the King's just Rights, as also those of the Church of *England* established by Law; both which were then invaded by that Parliament. Thirdly, That no sober Man of the King's Party then did (any more than we do now) suppose the Judgment either of the whole, or major part of the Parliament, to be an infallible Rule of Law or Obedience, but only as far as it agreed with the antient and known Laws of the Kingdom: and hence it was that many Noblemen and Gentlemen, who were for the King, refused to yield Obedience to those commissioned by the Parliament, according to their Ordinance for settling the Militia. And therefore as they refused to own the Power of the Parliament when it was illegal, so I freely grant, that upon the same grounds both you and I, and any considering Man, have also the like Right to examine whether the late Votes and Declaration of the present Convention were according to the antient fundamental Constitution of the Kingdom, and the publick Good and Safety of the Commonwealth, or not; for otherwise all the Discourses that you and I have had upon this Subject are altogether in vain, and to no purpose.

M. But to urge this matter a little farther; tho it be lawful (upon your Principles) for the Parliament, when sitting, to be Judge of its own and the Peoples Danger of losing their Religion and Civil Liberties, and of the King's Encroachments upon them; yet when the King came to the House of Commons, to demand and seize the five Members, and had failed in the Undertaking, they were never after that satisfied with his ceasing farther Prosecution, but judging themselves and the Nation in imminent danger, as long as the King had any power to hurt them, they would not be satisfied unless the Militia of the Kingdom were wholly put into Commissioners of their own Nomination; especially when after the breaking out of the *Irish* Rebellion, &c. Sir *Phelim O'neale*, their General, pretended to shew the King's Commission for what they had done. So that (to argue on the same Principles) if the Nation were then in great danger, and that its Representative, the two Houses of Parliament, were the sole and proper Judges of this Danger, then upon the King's refusal to pass a Bill to settle the Militia out of his power into indifferent Hands, was certainly a Denial of granting all means necessary for the publick Peace and Safety of the Kingdom, and consequently the Parliament might upon the same grounds justify their raising an Army to force it.

E. I confess you have urged all that ever was, or can well be said in Justification of the beginning of that unhappy Civil War by the Long Parliament: yet give me leave to tell you, that I think it will not do the business; for whenever the King and Parliament differ about the Exercise of any part of the Supreme Power, such as is that of the Militia, that great Power of the Sword, which when there is any Dispute about it, or even when it is feared the King will abuse that Power to enslave the Nation, ought to reside in King and Parliament jointly; whereas it became then divided, both the King and the Parliament separately claiming their Right to it. But at this present *Revolution*, the King being gone away without leaving any Deputy or Vicegerent behind him, or calling a Parliament before his Departure, the Question now arises, Whether by his Departure his Right to govern be lost or not? And tho the present Convention have determined that it is, yet I must still own, that neither you nor I are obliged to stand to their Judgment any farther than former Precedents from History, and Declarations of Parliament, and Statutes shall incline us; for we must not blindly take the ordinary Books of Reports

Reports (which are but the Opinions of private Judges) for Law in such great Cases: therefore since nothing but the Justice and Reason of the thing ought to determine us in these matters, I shall endeavour to examine them to the bottom.

Therefore the Parliament is not infallible, and always in the right, nor the King always in the wrong; since that may fall out either way, according as either of them, through an Excess of Ambition or Desire of Power on one side, or too much Encroachment upon the Prerogative on the other, may give the first occasion for a War. I shall now comply so far with you, as to grant, that the breaking out of the Rebellion in *Ireland*, and the Queen and those of her Party so notoriously favouring the Papists, and Sir *Phelim O-neale*'s pretending to have the King's Commission to raise Rebellion, and murder the Protestants in *Ireland*, together with the King's Attempt to seize the five Members, might then seem just Occasions for the two Houses of Parliament to desire to have the Militia settled in some hands that they could confide in. Yet truly to determine whether the King or Parliament were in the wrong, he in denying, and they still urging to have the Militia settled according to their own pleasure, will give us occasion to look back, and take a short View of the most material Transactions of those Times.

My next business therefore shall be to shew you what great things the King had done to satisfy the Parliament and the whole Nation, that he did not intend to govern arbitrarily, but to make a general Reformation of whatever had been amiss in the former part of his Reign: for at the beginning of this Parliament, besides the declaring of *Ship-Money*, *Tonnage*, and *Poundage*, with several Monopolies, to be illegal, he passed a Bill for *Triennial* Parliaments; by which, in case of a failure of the issuing out of the King's Writs in due time, the Sheriffs were impower'd to issue out Precepts for the Choice of Members to serve in Parliament, who were required to meet accordingly. After this he passed that unparallel'd Act, which was indeed the main cause of all the Wars and Confusions that followed; whereby, under the pretence of giving the Parliament credit to take up Moneys to pay off the *Scottish* and *English* Army, the King tied up his own hands from proroguing, adjourning, or dissolving that Parliament without their own Consents: by which Act the Supreme Power became divided, and the Parliament was made wholly independent on the King; which indeed produced a great Alteration in the very Constitution of the Government it self. At the same time (tho with much difficulty) he passed the Bill of Attainder against his late chief Minister the Earl of *Strafford*, for certain Crimes and Misdemeanors, which certainly were not High Treason at Common Law.

Then the better to satisfy his People, the King within less than two Months after passed two Acts for taking away the *Star-Chamber* and *High-Commission Court*; and having done all these unparallel'd Acts of Grace, he adjourn'd the Parliament, and went into *Scotland*, in order to quiet the late Commotions of that Kingdom.

But to let you see that nothing less than the depriving of the King of his antient and undoubted Prerogative would serve the turns of an unquiet Faction, you must know, that during the King's absence, this discontented Party in the House of Commons took a fresh occasion of aspersing his Majesty's Government, by contriving a Petition with a Declaration, called a *Remonstrance* of the State of the Kingdom; which being brought into the House of Commons at their re-sitting after their late Adjournment, was passed by a very small Majority of Votes, notwithstanding Sir *Edward Deering*'s, and divers other worthy Members arguing and protesting against it: so that the Debate lasting from three of the Clock in the Afternoon till ten the next Morning, it caused many of the Members, through Weakness or Weariness, to leave the House before they came to a Vote; which made Sir *Benjamin Rudyard* compare it to the forced Verdict of a starved Jury. This being presented to the King, contained an invidious Repetition of all the past Miscarriages and Grievances of his Reign, tho they had been all, or most of them, either long since over, or already redressed, and taken away either by particular Acts, or Votes of Parliament. This Declaration and the Petition, tho they were answered by another published by the King for that purpose, and written with great Strength of Reason;

Rush. ib. 437.

Whid. Mem.
P. 49.

Dugdale's
short View, &c.
p. 78. See the
Answer at
large.
Rush. ib. p. 452.

son; yet their Paper had so far obtained the end for which it was published, as to render his Government and Ministers odious to a great many well-meaning People, who gave entire credit to whatever their Representatives had set forth.

Id. p. 76, 77. But indeed all this tended towards their main end of getting the Militia into their own hands, since they knew when they had that, they could easily accomplish whatever else they had a mind to; and for this purpose some of that Faction invented and spread abroad divers horrid Plots and Conspiracies against the State, of which the House of Commons had several false Informations, and seemed to give credit to them; as that a great multitude of Papists and other Malignants were about to rise in Arms; also of great Forces to be sent out of *France* and *Denmark* to assist the King to enslave the Nation, and alter the Religion established: of which Reports there was not a word true, as the People were afterwards convinced of, when it was too late.

Id. p. 78. Yet at present these Stories had so far wrought the effect for which they were raised, that divers Apprentices, and others of the meaner sort of the City of *London*, coming down in great multitudes to *Whitehall* and *Westminster*, petitioned against the Bishops, and demanded them to be excluded the House: which Clamours, with other saucy reflecting Language against the King, so far provoked him, that he thereupon issued out his Proclamation against such tumultuous Assemblies, as contrary to Law; and at the same time, by the Advice of the Judges, he issued forth an Order to the Sheriffs of *Middlesex*, and Justices of Peace of *Westminster*, for the setting of a Watch or a Guard about the Hall and Parliament-House: at which, when it came to be put in execution, the House of Commons took offence, and having examined the Constables and Under-Sheriffs that set the said Watch, they voted it a Breach of Privilege to set Guards about their House without their Consent, and thereupon sent their Serjeant to them to order their Discharge; and Mr. *Long*, a Justice of *Westminster* who had signed the Warrant, was sent to the Tower, as having exceeded the Authority given him by the Writ, in sending down armed Men to the Parliament-House, without acquainting them with the same.

Id. p. 466.

Id. ib. 456.
Dugd. ib.

And yet, which was more strange, a few days after they thought themselves in such danger of a malignant Party (as they called them) that they addressed to the King that they might have a Guard out of the City, to be commanded by the Earl of *Essex*; which Request being deny'd, and civilly put off by his Majesty as unnecessary, they thereupon order'd Halberts to be provided and brought into the House for their better Security: But the truth was, the Faction looked upon themselves in no danger from that Party of the Mob that cried out against the Bishops, tho at the same time they insulted both the King and the Lords that were not of their Party; whilst the same Men pretended they were afraid of having their Throats cut by certain malignant Officers of the late disbanded Army. But this was only a pretence in order to put the Nation into a posture of Defence under confiding Persons of their own Nomination, and to get the Militia, or whole Force of the Nation, into their own hands.

Rush. ib. p. 471.

M. I think so far you are in the right; pray go on to shew by what means they obtained it.

E. I shall proceed to do so in as few words as is possible, for the true Relation of so many and so various Transactions, as quickly followed each other.

Dugd. ib. p. 81.

When the King found that there was a malicious, prejudiced, and turbulent Party in both Houses, who made it their business, instead of healing the Breaches between the King and them, to make them wider; and the Ring-Leaders of this Faction were the Lord *Kymbolton* in the House of Peers, and in that of the Commons, Mr. *Hamden*, Mr. *Pym*, and three others whom I need not particularly name, and who were also believed by his Majesty to have had a chief hand in exciting the *Scots* to take up Arms, and enter *England* as they had done: he thought fit by his Attorney-General to impeach those Members at the Bar of both Houses of High Treason, upon seven Articles then exhibited; and then for the better Prosecution of this Accusation, he commanded their Chambers and Studies to be searched, and their Trunks with their Papers to be sealed up. This was not only voted a high Breach of Privilege by the House of Commons, but the Lords also thereupon order'd, that

Rush. ib. p.
473, 474.

that they should be forthwith open'd and deliver'd to their Owners. And when the King did by his Serjeant at Arms demand the said Members to be taken into custody, they were so far from complying with that Demand, that the Speaker, by the Order of the House, commanded them to attend *de die in diem*, till the House should take farther order about it. So that tho Treason, Felony, and Breach of the Peace, have been at all times excepted out of the Privileges of Parliament, yet it seems the Law was otherwise with them, and they declared that none of their Members were to be seized on any account whatever, without the Leave and Consent of the House of Commons. Wherefore, when the King found he was not like to obtain any thing by his Impeachment, unless these Members could be first secured, he was by the Queen, or some others near about him, put upon a rash and violent Action, which was to go in Person to the House of Commons not only to demand, but seize the Persons of the five Members; which, being attended with his Guard of Pensioners, and about two hundred other Courtiers and Gentlemen armed with Swords and Pistols, he endeavour'd to perform: but when the King came into the House of Commons, he found none of those Members he looked for, for they having notice of his coming, were withdrawn before he could get thither. But as I do not justify the King's Proceedings, in going to the House of Commons in Person to arrest those Members, since the King cannot in Person execute the Office of a Messenger, or other inferior Officer; for then there could be no Person left to whom the Subject might appeal: so thus much may be said in his excuse, that he did not take this Course till he found all other gentle Methods utterly desperate.

Id. p. 476.

Whitl. ib. p. 52.

But to proceed: When upon the Votes of the House of Commons, that this Action of the King's, in coming to the House in a warlike manner to seize their Members, was a high Breach of Privilege; and when, upon the several Petitions from the City and divers Counties in their behalf, they were brought by a Rabble of Watermen, and other desperate Fellows, as it were in triumph; then he found it in vain to prosecute his Impeachment against them any farther: and so he gave the Houses of Lords and Commons notice, That he would for the present not only wave his former Proceedings, but, as a farther Testimony of his unfeigned Intentions towards his People for the better composing of this matter, and removing all their Fears and Jealousies, he offer'd to grant such a General Pardon to all his loving Subjects, as should be thought convenient by both Houses. But this was refused by the Commons, and nothing would serve to quiet their Minds: but being full of needless Fears and Jealousies, put into their heads by false Reports, and feigned Letters of strange Designs to seize on, and murder the Members of Parliament; they not only ordered a Guard for their own safety, consisting of the City Trained-Bands, under the Command of Colonel Skippon, but likewise ordered a Guard to be set upon the Tower, that so no Ammunition nor Provisions should be carried from thence without the Authority of Parliament: and also that Sir John Hotham should take the Command of the Town of Hull, and secure (that is, seize) the King's Magazine of Arms there, and should not deliver them without the King's Authority, signified to him by the two Houses of Parliament: which was indeed to take away the Command of the King's Arms and Stores, bought with his own Mony, without any just cause shewn, except, as I said before, their own causeless Jealousies. But the better to discover the steps this Faction took to get the Militia of the Kingdom into their own hands, I shall now look back to what was done a little before this: When the City and Nation were put in a strange Ferment by the above-mention'd false Reports, that same Party in the two Houses excited underhand divers of the meaner sort of the City of London, and County of Middlesex, as well as other Counties, to petition the Parliament, that all Papists should be disarmed, that all Bishops and Popish Peers should be excluded out of the Lords House, and the Kingdom speedily put in a posture of Defence; and to this end, that the Militia should be committed to such hands as the Nation might most confide in. Now to quiet and satisfy the House of Commons and City, whose Minds were still much disturbed about the business of the five Members, the King on the twentieth of January sent the two Houses of Parliament a most gracious Message in writing; wherein he proposed, " For the preventing the Distractions

Id. p. 479.

Dugd. p. 82.

Rush. p. 488.

Rush. Hist. Col. Par. 3. Vol. 1. p. 469. Id. ib. p. 495.

Vid. A short View of the Troubles, Sec. P. 85.

Rush. ib. p. 515

" that

“ that were now likely to ensue, that they should fall into a serious Consideration of such Particulars as they should judge necessary for the upholding and maintaining his Majesty’s just and regal Authority, the settling of his Revenue, and for the present and future Establishment of their Privileges, the quiet and free Enjoyment of their Estates and Fortunes, the Liberties of their Persons, the Security of the true Religion professed by the Church of England, and appointing of Ceremonies in such a manner as may take away all just Offence; which when they shall have composed and digested into one entire Body, that so his Majesty and themselves may be able to make the clearer Judgment of them, it shall then appear, by what his Majesty shall do, how far he hath been from intending those things which the great Fears of some Persons seem to apprehend, and then how ready he shall be to exceed the greatest Examples of the most indulgent Princes: and it concludes, that if the present Distractions, which apparently threaten the Ruin of this Kingdom, do not end in a happy Accommodation, his Majesty shall call Heaven and Earth to witness, that it hath not failed on his part.”

To this reasonable Proposal, the House of Commons alone return an Answer, by way of Petition, to this effect: “ That to give them a sure Ground of Safety and Confidence of what he would be pleased to do, he should forthwith put the *Tower of London*, and other principal Ports, together with the whole Militia of the Kingdom, into the hands of such Persons as should be recommended to him by the Petitioners,” (*viz.* House of Commons.) But the King being unwilling to part with those Powers and Prerogatives, which his Predecessors from time immemorial constantly enjoyed, replied to this purpose, That he hoped his last gracious Message to both Houses would have produced a better effect. As to the *Tower of London*, his Majesty did not expect, having preferred a * Person of known Fortune and unquestionable Reputation to that Trust, that he should be pressed to remove him without any particular Charge laid against him; yet if upon due examination it should appear, “ That his Majesty was mistaken in his Opinion of this Gentleman, he would make no scruple to discharge him, which otherwise he should be loth to do: That as for the Forts and Castles of the Kingdom, his Majesty is resolved they shall always be in the hands of such Persons as the Parliament may confide in; but the nomination of the Persons to those Places being a principal and inseparable Prerogative of the Crown, derived from his Ancestors by the fundamental Laws of the Kingdom, &c. he will reserve to himself.” And then proceeds, “ That as for the Militia (which by Law is subject to no Command but that of his Majesty, and of the Authority lawfully derived from him) when any particular Course for the ordering the same (which his Majesty holds very necessary for the Peace and Security of his Kingdom) shall be proposed to him, he will return such an Answer as shall be agreeable to his Honour, and the Safety of his People; being resolved only to deny those things, the granting of which would alter the fundamental Laws, and endanger the very Foundation upon which the publick Happiness and Welfare of his People is founded and constituted, and would nourish a greater and more destructive Jealousy between the Crown and the Subject, than any of those which seem to be taken away by such a Satisfaction.” And then further goes on, “ That he found his having granted more than any King ever had done before, encouraged his House of Commons to ask more of him than ever Subjects had asked; yet, however, if they shall think fit to acquaint him with the particular Grounds of their Doubts and Fears, he will very willingly apply Remedies proportionable to those Fears; for his Majesty calls God to witness, That the Preservation of the publick Peace, the Law and Liberty of the Subject, is, and shall always be, as much his Majesty’s Care and Industry, as his own Life, or the Lives of his dearest Children.” Then he concludes “ with conjuring the House of Commons by all the Acts of Favour they have received from him, as also by divers other Motives, that they would not be transported by Fears of impossible Dangers, to put themselves or his Majesty into real and present Inconveniences; but that they would speedily pursue the way proposed by his Majesty’s former Message, which in human Reason is the only means to compose the Distractions

“ of

* Sir John Byron.

“ of the Kingdom, and with God’s Blessing to restore a great measure of Felicity to King and People.”

But the Faction in the Commons-House was not at all satisfied with this reasonable and moderate Answer, and not having as yet been able to procure the House of Peers to consent to join with them in their farther petitioning his Majesty for the Militia, they desisted from returning him any Reply for some time, till they were again backed and encouraged by several Petitions from those of their Party in the City, and divers Counties of *England*; and had by that, and several other Artifices, obtained a Majority in the House of Peers, to join with them in another Petition for putting the Militia wholly out of his Majesty’s power. Dugdale’s Short View, p. 85.

M. I should be glad to understand by what means there was so sudden and so great an Alteration wrought in so judicious and august a Body, as that of the House of Peers.

F. I shall comply with your Desires, and to make you the better to understand it, you may please to take notice, That this could never have been brought about, had not several of that Great Council been clapt up in Prison, and divers of the Popish and other Lords frightned from coming to the House by the Tumults and Petitions of the Rabble. But as to the Bishops, you may remember, that they having been several times not only menaced, but also violently assaulted by a rude multitude of Apprentices and other ordinary Fellows, that came down in great numbers, armed with Staves and other Weapons, under pretence of petitioning against the Bishops and Popish Lords having their Votes in Parliament: the former thought it from thenceforth not safe for them to come any more to the House, till the Cause of their just Fears were removed too. And twelve of the Bishops (of whom the Archbishop of *York* was the chief) presented a Petition and Protestation to the King and House of Peers, setting forth their undoubted Right to sit in Parliament, and demanding his Majesty’s Protection for the same, declared their Hatred to Popery; and that so long as they shall be thus menaced and assaulted, they cannot attend to perform their Services in the House: and therefore protest against all Laws, Orders, and other Proceedings, that have or shall be passed in their Absence. Rush. ut supra, p. 466.

This Petition being delivered by the said Archbishop of *York*, and the other Bishops; and the House of Peers taking offence thereat, the House of Commons laid hold on that advantage, so as thereupon to impeach all those that had signed it of High Treason. And the Peers also too much resenting it, they were by their Order not long after (all except two, who were committed to the Black Rod) sent to the *Tower*, where they continued till such time as the King had passed the Bill for disabling them, and the rest of the Bishops, to sit and vote in Parliament, and then they were discharged: For the Faction having obtained the end for which they had accused them, they were prosecuted no further, but were all set at liberty except the Archbishop of *Canterbury* and Bishop of *Norwich*, who had been sometime before committed upon another account; and the former of these continued close Prisoner for near three years after, until he was beheaded, and the latter for near twenty years without ever being brought to Trial. But this by the by; only you may observe, that the rest of the Bishops and Lords, who looked upon themselves as obnoxious to the Faction, either forbore coming to the House at all, or else, if they came, durst not oppose the Designs that were then so furiously driven on. Ib. p. 467.

Nor did the Party rest contented yet, till they had stirred up and procured several factious Petitions from the City of *London*, and the Counties of *Essex*, *Hertford*, *Suffolk*, *Northampton*, *Kent*, *Oxford*, *Lincoln*, and *York*: some complaining of the Loss and Deadness of Trade, and others that there was no Redress to be expected, unless the Bishops and the Popish Lords were put out of the House; whilst others desired that the Kingdom should be put into a Posture of War. And the Faction having laid such a Foundation for the carrying on their Designs, by ensnaring the People with their own Petitions, which were delivered by many thousands in Person; as also from several false Stories and Reports of dangerous Plots and Designs of the Papists in *Lancashire* and other Places, it struck such a Terror in the Lords that remained in the

Dugd. p. 85, 86, 87, 88.

the House, that upon Mr. *Hollis's* again moving them at a Conference, *That their Lordships would now join with them, without any further delay, in petitioning his Majesty, that the Kingdom should be put into a Posture of Defence*: I say, the Lords, who refused to join with them at first in their Petition of the 26th of *January*, were so far brought about, that the Majority of them at last consented to it, being presented to the King on the 2d of *February*, which was to this effect:

Rush. p. 918.

"In the first place they set forth the present Evils and Calamities where-
 "with his Majesty's Kingdoms were most miserably entangled, and the im-
 "minent Dangers, which (as they pretended) threatned his Royal Person:
 "and tho they seemed to receive his Majesty's late Proposition of the 20th
 "of *January* with great Thankfulness, and would with Earnestness of Af-
 "fection endeavour to pursue the same; yet for the Safety of his Royal Per-
 "son, preserving the Honour and Authority of his Crown, and removing
 "all Jealousies betwixt his Majesty and his People, suppressing the Rebellion
 "in *Ireland*, preventing the Fears and Dangers in this Kingdom, and the mis-
 "chievous Designs of those who were Enemies to the Peace of it; they still
 "insisted, That for the accomplishing their Duties therein with more Com-
 "fort and Security, his Majesty would be pleased forthwith to put the *Tower*
 "of *London*, and all other Forts, with the whole Militia of the Kingdom;
 "into the hands of such Persons as should be recommended unto his Majesty
 "by both Houses of Parliament: and which they assure themselves would be
 "a hopeful Entrance into those Courses, which (thro God's Blessing) would be
 "effectual for the removing all Diffidence and Misapprehensions betwixt his
 "Majesty and his People, and (as they said) for establishing and enlarging
 "the Honour and Greatness of his Royal Posterity. And then conclude, that
 "they expected his Majesty's speedy and gracious Answer, the great Distrac-
 "tions and Distempers of the Kingdom not admitting any delay."

Id. p. 919.

The King being much surprized to find the House of Lords now brought over to the same Sentiments with the Commons, and that his late so reasonable Proposals to both Houses had met with so unsutable a Return, seemed however not at all transported at it, but soon gave them a short, but very handsome and reasonably Reply to this effect: "That having well considered
 "their Petition, and being desirous to express how willing he was to apply su-
 "table Remedies, not only to their Dangers, but even to their Doubts and
 "Fears; he therefore returned an Answer, That when he should know the
 "Extent of the Power which was intended to be established in those Persons,
 "whom they desired to be Commanders of the Militia in the several Coun-
 "ties, and likewise to what time it should be limited, that no Power should
 "be executed by his Majesty alone, without the Advice of his Parliament;
 "then he would declare, That (for the securing them from all Dangers or
 "Jealousies) his Majesty would be content to put into all Places, both of his
 "Forts and Militia in the several Counties, such Persons as both the Houses
 "of Parliament should either approve of, or recommend to him; so that they
 "declare before to his Majesty the Names of the Persons whom they should
 "approve of or recommend, unless such Persons should be named against
 "whom he should have just and unquestionable Exception."

Id. ib.

But to return again to the matter of Fact: So soon as the Faction saw it self thus backed and encouraged in the two Houses, they then joined in an Ordinance to regulate the Militia of the City, which was the first Encroachment they made upon the King's Prerogative in this kind; and to second this, they again petitioned the King for settling the Militia of the several Counties on such as they had nominated, giving him at the same time a List of the Names of those whom they designed for Lords Lieutenants in the several Counties, being all of them of their own Party.

Rush. p. 820.

The King respited his Answer till his Return from *Dover*, whither he had accompanied the Queen and his Daughter that were then going for *Holland*; and at the same time they presented him with a Form of an Ordinance, where-
 by they would have settled the Militia of the Kingdom in the hands of those Lords they had already nominated. But when the King demurred to grant it, they pretended to be so transported with Fears and Jealousies, by certain feigned Reports of dangerous Plots designed by the Papists, to burn down di-

vers

vers of the chief Cities and Towns in the Kingdom, " That they thereupon Id. p. 521.
 " dispatched away another Petition to his Majesty (still at *Dover*) for ordering
 " the Militia. To which they desired such a speedy Answer, as might raise in
 " them a Confidence (to use their own words) that they should not be exposed to
 " the Practices of those, whose Endeavours were to kindle that Combustion in Eng-
 " land, which they had in so great a measure effected in Ireland, and which no-
 " thing could do (as they said) but the granting that Petition."

His Majesty's Answer thereunto was just and moderate, " That as for the Id. ib.
 " City of *London*, and other Corporations, which by any antient Charters
 " had power of ordering the Militia, he conceived it unfit to alter their Go-
 " vernment, but that he could not consent to the indefinite time propounded
 " for this Posture of Defence. On his Refusal they voted this Answer to be Dugd. p. 88.
 " unsatisfactory, and as good as a flat Denial, and that his Majesty's Advisers
 " thereto were Enemies to the State, and mischievous Projectors against the
 " Defence of the Kingdom; also that this Denial was of such dangerous con-
 " sequence, that it would hazard the Peace and Safety of all his Kingdoms,
 " unless some speedy Remedy were applied by the Parliament." And imme-
 " diately they sent another Petition to his Majesty (who was then at *Theobalds*)
 wherein they protested, That if he did not speedily pass his Assent to the Satis-
 faction of their Desires, they should be necessitated to dispose thereof by Au-
 thority of both Houses, and that they did accordingly so resolve to do.

And they farther voted, That the Kingdom should be forthwith put into Id. p. 89.
 a Posture of Defence by the Authority of both Houses, and that the Navy
 should be speedily rigged under an Admiral of their own Nomination, and that
 a Declaration of the Reasons of their just Fears and Jealousies should be forth-
 with drawn up; declaring the Grounds of their former Votes, for putting the
 Kingdom into this Posture by Authority of both Houses, to secure them from
 the future from all Mistrusts and Jealousies.

And to carry on this under colour of the Peoples Desires, divers new Peti- Id. ib.
 tions were daily brought up from several Counties; as one from *Staffordshire*,
 pretending such Dread of Papists rising there, that every Man was constrained
 to stand upon his Guard, not daring to go to Church unarmed; others from
Worcestershire, *Berkshire*, *Norfolk*; as also from *Norwich*, *Lynne*, *Salop*, &c. all
 of them earnestly desiring this Posture of Defence.

So that the Faction being highly encouraged by these Petitions, the Ordi- Id. p. 89.
 nance for ordering the Militia of the Kingdom by Authority of both Houses,
 was the very next day assented to by the Lords; and thereupon new Lieute-
 nants were by them nominated throughout all *England* and *Wales*, without his
 Majesty's Consent.

And having in a grand Committee, sitting at Merchant-Taylors-Hall, con-
 trived the Declaration (mentioned in their Votes of *March 2.*) wherein they
 made a very great noise of a Design to alter the Religion in this Kingdom,
 and that the Wars with *Scotland* and *Ireland* were framed to that end; they Rush. p. 523.
 presented the same to his Majesty, first at *Theobalds*, and then again at *New-*
market within a few days after: which being then denied, they voted the
 King's Commissions of Lieutenancies in the several Counties to be illegal, tho
 they had not been altered since this Dispute; as also that there was an urgent
 and inevitable necessity for putting his Majesty's Subjects into a Posture of De-
 fence, and that the Ordinances of both Houses for the Militia, being obliging
 to the People, ought to be obeyed by the fundamental Laws of this Kingdom:
 And, lastly, That the Earl of *Warwick* should be appointed Vice-Admiral of
 his Majesty's Ships, tho he did by no means approve of him.

M. But pray, Sir, tell me what were the Motives that persuaded his Maje-
 sty to leave *London*, and travel Northward, at a time when the grand Affairs
 of the Nation rather required his Presence with his Parliament, to compose
 the Differences that were now begun between them?

F. To do this, it will be requisite to look back a little, and give you a
 more exact Relation of these Transactions: That his Majesty some time before
 thinking his Person in danger, and his Authority exposed by these exorbitant
 Courses, as also by the frequent Tumults and Affronts from the Mob (as has
 been already related) did not think it safe to return any more to *London* after
 his going down to *Dover* with the Queen; but coming no farther than *Green-*

Whid. p. 54.
Rush. ib.

which, he sent for the Prince and Duke of York from *Hampton-Court* to meet him there; and during his short stay at that Place, he sent the two Houses his Answer to their Petition concerning the Militia, shewing the Inconveniences and Breach of his Right to have it settled as they desired. From whence he went to *Theobalds*, where he received that bold Petition of the two Houses abovementioned; and being removed from thence to *Newmarket*, on the 9th of *March* the Earls of *Pembroke* and *Holland* were sent thither to him, with that yet more bare-faced Declaration of the two Houses already mentioned; setting forth the King's Misgovernment and unjustifiable Actions (as they called them) and in which they ripped up all that could be thought of to misrepresent his Person and Government, being to this effect:

1. By attempting to incense the late *Northern* Army against the Parliament, *Fermin's* treasonable Action, and Transportation by the King's Warrant.

2. The Petition delivered to Captain *Leg* by the King's own hand, and signed *C. R.*

3. The Business of the Lord *Kimbolton* and the five Members, the suspicious Design of a Guard about the King's Person, the underhand promoting the *Irish* Rebellion.

4. The ordering of Sir *John Pennington* to land the Lord *Digby*, thereby to alienate the King from his Parliament, and to procure foreign Assistance to the King. This appeared more credible, by his Removal from *London* with the Prince, and the many Advertisements from *Rome*, *Venice*, *Paris*, and other Parts, of great foreign Aid to be given to the King, in reference to some grand Design against the Protestant Religion and the Parliament; tho' (as it proved by the Event) there was no such thing ever designed or transacted abroad.

Id. ib.

Then they desire the King to put away his wicked Counsellors, and to put his Trust in the Parliament; which if he would do, they would sacrifice their Lives, Fortunes, and utmost Endeavours to the Supportation of his Sovereignty.

The Lords, that then attended his Majesty with this Petition, moved him to come nearer to the Parliament, but it was refused. And when they further urged, that the Militia might be granted, as was desired by the Parliament, for a time; his Majesty replied with an Oath, *No, not for an hour*: so jealous was he of that great and important Power of the Sword, which no wise Prince can or ought altogether to trust out of his own hands. Then he told them in short, that as their Fears, Doubts, and Jealousies were such, as he must take time to satisfy the whole World to be needless; so his own were not trivial, occasioned by so many scandalous Pamphlets, seditious Sermons, and sundry publick Tumults, hitherto unenquired into, and unpunished.

Then a few days after, so soon as his Majesty came to *Huntingdon*, he published a Declaration, for further Answer to theirs, to this effect:

1. That he had no evil Counsellors about him, but leaves such to their Censure where they should find them.

2. That he wished the Judgment of Heaven might be manifested upon those who had any Designs against the Protestant Religion; and as to the *Scottish* Disturbances, they were already silenced by the late Act of Oblivion.

3. That the charging him with any Inclinations to the *Irish* Rebellion, was a high and causeless Injury.

4. That he never intended to exasperate the late Army, or to use them against the Parliament.

5. That he signed Captain *Leg's* Petition only to satisfy the Army, and Sir *Jacob Ashley* was of his Opinion as to the Reasonableness of it.

6. That *Digby* and *Fermin* were not at *Whitehall*, nor had any Warrant from him after their Restraint.

7. That he had given sufficient Answers about *Kimbolton* and the five Members, enough to satisfy any reasonable and unprejudiced Persons.

8. That the care of his own Safety caused him to raise a Guard at *Whitehall*, and to receive the Tender of the Service of the Gentlemen of the Inns of Court; and that he looked upon those foreign Advertisements to the Parliament as false, idle, and incredible Stories.

Whilst

Whilst the King continued at *Huntington*, he sent a Message to the two Houses, *March 15.* that he intended to make his Residence for some time at *York*, and desired them to hasten their Succours for *Ireland*; and not upon any pretence of an Ordinance, to which his Consent was not given, (as by Law it ought) to act against Law, which he himself was to observe, and his Subjects to obey.

Notwithstanding which, the Parliament voted their Ordinance for the Defence of the Kingdom, not at all prejudicial to the Oath of Allegiance, but to be obeyed, as being agreeable to the fundamental Laws; and the King's Commands for the Lieutenantcy over the respective Counties, to be illegal and void: which was indeed a downright forcible disseizing and ousting of his Majesty of his just Right and Prerogative in the Militia of the Kingdom, and necessary Defence of it, as well as his own Person and Authority.

Whitlock's
Memoirs, p.
55.

M. I cannot deny but that you have given a fair account of all the considerable Transactions relating to this great Affair of the Militia, which was the chief Ground of that unhappy Quarrel between the King and the two Houses: yet give me leave to urge what I have heard several well-meaning Persons to observe concerning his Majesty's leaving *London*, and going to *York*; that it was a great wonder to all prudent Men that the King should leave the capital City, the Place of his and his Predecessors usual Residence, where most of his Friends and Servants were about him, the Magazine of all Provisions both for War and Peace, the Seat of Intelligence and Supplies; and betake himself to the Country, where these things were scarce to be had: and by his leaving the Town, bring great Troubles and Disadvantages upon himself and his Affairs, unless he had fully resolved, before ever he had left the Town, to have begun a War against the two Houses.

And whereas you alledg that his Majesty could not be safe at *Whitehall*, by reason of the Tumults and Insults of the Mob; I pray tell me why he might not have secured himself sufficiently against them, either by continuing at *Hampton-Court*, or else by removing to *Windsor*; which, besides the distance from *London*, is a Place of that competent Strength, that he might have continued safe enough there against any Attempts, except a formal Siege, tho the Citizens and Apprentices should presume to come down thither to petition him with Arms in their hands. And admit they had made any Assault upon the Place, they could have done him no prejudice; since at the worst, besides his own ordinary Guards, he might have ordered the *Posse Comitatus* of the adjacent Counties to come in, and suppress those tumultuous Forces. But instead of this, the King went away to *York*; and tho the two Houses, as well before he went, as after his Arrival there, often petitioned him to return to them, yet he still refused to do it: and so the War began (as they said) by his raising a Guard of the Gentry and People of that County, for the Security of his Person, and going to seize the Ammunition at *Hull*, when no Army was as yet raised against him.

F. I confess what you now urge does carry a considerable shew of Reason with it, and was much argued *Pro* and *Con* by the Politicians of those times; but if we may give the King the liberty (as every Man else ought to have) of judging of the Greatness of his own Danger, and since (as you your self confess) he could not be safe at *Whitehall*, by reason of the Tumults of the Rabble, it might have been as hazardous for him to have stay'd any where else so near the Town. For suppose the City-Rabble had come down with Arms in their hands to *Hampton-Court* and *Windsor*, to petition him to grant the two Houses the Command of the Militia, or any thing else they had a mind to, the *Posse Comitatus*, you mention, would I doubt have stood the King in little or no stead, and have hardly suppressed them; since the common People of most of the adjacent Counties had (as appeared by their late Petitions) been as much poisoned and prepossessed against the King, as the People of *London*: So that he might have been assaulted and imprisoned, nay taken in his own House, and the Parliament might (for ought I know) have taken their parts that did it, and declared, that they were not to be kept out, or denied those Petitions, which the two Houses had voted to be according to Law, as well as they had done before, when, after a great Concourse of the Rabble coming down to *Westminster*, they cried out no Bishops, and gave saucy Language to the King him-

self: Therefore for the better prevention of any more such dangerous Tumults and Uproars so near his own Palace, and the two Houses of Parliament, he had directed his special Writ unto the Sheriffs of *London* to place a Guard at *Westminster*. But the House of Commons presently voted it to be a Breach of their Privileges, and an Offence of an high nature; and thereupon not only ordered the said Watch to be discharged, but questioned and committed the Justices for setting it, as hath been already related. Now what can be a more exprefs Proof, that the prevailing Faction in the House of Commons were so far from suppressing, that they rather encouraged those Tumults, and thereby not only took away the Liberty and Safety of both Houses of Parliament, but also rendred it unsafe for the King's Person to remain in his own Palace?

But as for his Majesty's going down to *York*, and his farther Proceedings after he came thither, I shall, for his clearer Justification, give you a short account of them. As to the Business of *Hull*, and the King's taking a Guard at *York* for the Security of his Person, there will be, I hope, little need to doubt, whether the King might not very well justify his Actions at that time, and in so dangerous a Conjunction: for he now plainly saw that the Parliament had already endeavoured to get the Militia of the Kingdom both by Sea and Land into their own hands, whereby they might, whenever they pleased, compel him to do what they had a mind to; it was sure then high time (if ever) to prevent them from seizing all the Magazines of the Kingdom, and to secure somewhat whereby he might be able to manage a defensive War, in case they should proceed to extort the whole Power of the Militia by force. Therefore since those Arms in *Hull* were his own proper Goods, being bought long since for the War against the *Scots*, he might, I think, dispose of them to any use he pleased, unless it were to make war upon his People, which he always utterly disavowed and declared against. And therefore for Sir *John Horham* to presume to shut the King out of his own Town, tho he offered to enter it but with twenty Horse, was certainly an Act of downright Rebellion; for he might as well have shut him out of any other, nay all the Towns of *England* as that: so that this Act alone could be no Declaration of his Intention to make war against the Parliament, especially after Sir *John Horham* had also summoned the Trained Bands of the adjacent Country to come in to his assistance; besides those Forces that he had already brought with him from *London*, before the King had done any hostile Act upon that Place: All which was as plain and open Declaration of War against the King as any could be, unless he had actually discharged the Cannon on the Town-Walls against his Majesty. Therefore upon these Proceedings the King might be very well justified, if he also raised all the Militia of *Yorkshire* to reduce that Place to his Obedience: For if the Parliament by their own Authority could keep the King out of his own Town by force, they might as well have appeared in Arms against him in the open Field, as they did not long after.

M. But I suppose you are sensible enough what they insisted on in their Justification of this Action, viz. That tho Sir *John Horham* did first keep the King out of *Hull* by their Order; yet this (said they) was only done to prevent his beginning the War upon them, which they were very well satisfied he designed when he went into the *North*. And this (they say) was evident by several of his Actions: For else to what purpose did he send the Queen into *Holland*, with the Princess her Daughter, together with the rich and antient Jewels of his Crown, and divers Pictures of great Value, which were there pawned or sold outright, and the Money laid out to buy Arms and Ammunition, which she brought over with her not long after, when she landed at *Burlington-Bay* in *Yorkshire*? Or to what end else did the King leave his Parliament and go to *York*, and there, under the colour of a Guard for the Security of his Royal Person, raise Forces, which in a little time after increased to an Army? And admitting it to be true, that the Parliament first issued out Commissions for raising of Men, and mustering the Militia for their Service; yet it was not till the King had endeavoured to enter *Hull*, to seize the Arms that were laid up in that Place, and also till there had been divers Bickerings and Skirmishes in several Counties between the Militia that had been mustered and commanded by the King's Commissioners of Array, and the like People that were headed by those who were sent by the Parliament to muster and discipline

pline them; so that what the Parliament did, they looked upon as done in their own Defence. And had they staid till he had actually raised an Army to have marched up to *London*, the King might then have surprized them, quite unprovided for their own Defence; so that they could have made no considerable Resistance, for the Safety and Preservation of the Parliament, and consequently of the Liberties of the Nation. And if this had been, as they themselves set forth, it puts a much better colour upon their Cause and subsequent Actions; since that makes it only a defensive War against the King, which is justifiable enough upon your own Principles.

F. I will not deny but that when the Queen, and her Daughter the Princess, went over into *Holland*, with the Jewels and Pictures you mention, it might be done with an intent to pawn them for Money, in case a War could not be avoided; but that there was none then designed by the King that Summer, appears plainly enough by the Queen's not coming over with these Arms till the Year following: since otherwise she went early enough in the Spring to have bought those Arms, and sent them over to the King, or returned her self with them the same Year. And as for your other Objection, That the King designed a War by his going into the North, and there raising a Guard, and endeavouring to seize the Town of *Hull*, it was the violent Proceedings of the Parliament that forced him to that Resolution; for besides that he did not think himself safe any where near *London*, where the Militia of that City was commanded by its own Officers, regulated by the Parliament, they might, under the pretence of removing evil Counsellors, not only have seized them, but his own Person likewise. And when upon his first Departure from *London* to *Theobalds*, they so earnestly pressed him to settle the Militia of the Kingdom by Act of Parliament, in the hands of Commissioners of their own appointing; what was it but to tell him in plain Terms, that the Forces thereof were no longer to be trusted in his power? For after he had so openly attempted to seize their Members, they no longer now looked upon him as their Friend, and scarcely as their King, any more than in Title; because when once they were possessed of the Sword, that main Prerogative of the Crown, they knew that he and all those that adhered to him, were absolutely in their power: and therefore he had very good reason to tell the Commissioners, whom the Parliament had sent to him to *Theobalds* for his Assent to the Bill for the Militia, *That he would never trust that Power wholly out of his own hands, no not for an hour.*

M. I shall not insist farther as to this point; but pray give me the rest of this Year's Transactions.

F. With all my heart, and I will do it as briefly as I can; but must first farther inform you, That a little before this, the King himself offer'd a very good Expedient to compose this Dispute, by a Bill for the Settlement of the Militia for a certain time; wherein he was content to name but one half of the Lords Lieutenants and other Officers, and so leave the rest to the Nomination of the Parliament. But neither would this satisfy them, unless they had the sole Power of it settled in Commissioners of their own Nomination, and that without any time limited; and to that end they refused the Bill the King had offered, and drew up another (that I last mention'd) by which they put that great Trust wholly in certain Lords and Gentlemen, whom they look'd upon to be entirely in their Interests, quite excluding the King from having any more to do with it, than if he had been a Duke of *Venice*: and the unreasonable urging of this Bill proved that Rock of Offence, on which the common Peace of the Nation was not long after split.

M. But pray tell me, What did the King after he came to *York*?

F. I shall observe your Directions. You may remember, that after he had been denied entrance into *Hull* (which has been taken notice of by your self) he proclaimed *Hotham* a Traitor, and so returned to *York*, and from thence sent to the Parliament to have exemplary Justice against him, and that the Town, together with the Magazine, should be deliver'd to him; but they were so far from complying with his reasonable Demand (tho he sent more than once about it) that after some Messages which passed between the King and them, they issued out a Declaration, wherein they justified Sir *John Hotham's* late Action, and set forth the King's Design upon *Hull* as an Infringement of the

Whitl. Mem.
p. 55.

Whitl. ib.
Rush. p. 567.

the Liberties of the Subject, and a Breach of the Law of the Land (tho how, or wherein, had been a hard matter to shew;) and then they sent certain of their own Members down thither for the better securing of the Town. *Hotham* being thus backed by the Parliament, presently sent out Warrants in his own Name to summon the Trained-Bands of the adjacent Country to march in with their Arms for the Defence of that Place; which being obey'd by several of them, he then pretended he had no present occasion for them: and so having disarmed them, turned them home again.

A little before this, the two Houses not only passed their Ordinance for the Militia, against his Majesty's Consent, and without letting him have any share in the Disposal of it; but also to reinforce it, issued out a strict Order, requiring all Persons, so authorized by themselves, immediately to put that Order in execution: which was done, notwithstanding the King's Declaration to the contrary; wherein he set forth, that it was illegal, and commanded them not to obey it, since the two Houses had no lawful Authority to make any such Ordinance without his Consent. But this Declaration found no Obedience, for the Parliament-Commissioners had already muster'd it, and exercised the Train'd-Bands in several Towns and Counties where they were able to do it; of the Success of which you shall hear farther by and by.

Whereupon the King having hitherto had no Guards, but his Gentlemen Pensioners and his ordinary Yeomen, and knowing the Parliament had some time before raised a Guard for their own Security, he therefore issued out his Letters of Summons to the Gentry of *Yorkshire* to attend him at *York*; who coming to him accordingly, he then acquainted them with the late illegal Proceedings of the Parliament; and that he looked upon his Person to be no longer in safety without a greater Guard, and therefore desired their Assistance for that purpose: and this being cheerfully complied with by most there present, they returned home to raise the Forces he told them were necessary for his present Service. And not many days after he farther signified to them by his Letters, that he should take it kindly if they would attend him so armed and provided as they should think fit, for he apprehended himself in some danger.

This was readily obey'd, and many of them came in to him pursuant to his Summons. At this the Faction of the two Houses were so highly alarmed, that thereupon they immediately voted, that what the King had done at *York*, in raising of a Guard, was a Preparation for a War against them, and a Breach of the Trust reposed in him by his People contrary to his Oath, and tending to the Dissolution of the Government; and that all such as served him therein, were Traitors to the Laws of the Kingdom.

Now by what Law they could judge it so, I am yet to seek, it being expressly declared by the Statute of the 7th of *Edward the First*, *That it belongs to the King alone to * prohibit Force of Arms, and all other Force, when it shall please him, and to punish Offenders which shall do contrary to Law; and herein every Subject is to be aiding and assisting.*

* The French Word is Desfendre.

But to return to the matter in hand: Immediately after this the Faction at *Westminster* published another Declaration in the name of both Houses of Parliament, "forbidding all Men to attend his Majesty at his pleasure, except such as were bound thereto by special Service; and that if the Trained-Bands, or any other his Majesty's Subjects, should upon any such Command be drawn out in a warlike manner, they should be esteemed as Disturbers of the publick Peace:" wherefore the Sheriff of each County was thereby ordered forthwith to raise the Power thereof to suppress the same, and to keep his Majesty's Peace according to Law.

And having already voted, that the Magazines of each respective County in *England* and *Wales* should be presently put into the power of such Lords Lieutenants, &c. as the Parliament most confided in: They also published another Declaration, "highly reflecting on his Majesty's late gracious Messages, Answers, and Declarations, taxing him with Breach of his Word and Promises; as also with continued Oppressions and Violations of the Laws, and with an intent to bring up his Northern Army to awe the Parliament."

And having so done, they voted farther the next day, "That the King (seduced by wicked Counsel) designed to make war against his Parliament; which

“ which (*as they pretended*) in all their Consultations and Actions, proposed no other end unto themselves but the Care of his Kingdom, and the Performance of all Duty and Loyalty to his Person.”

Nor was this all, but at the same time they made as great Preparations for a War, as if it had been against a foreign Enemy.

Having managed their point thus far, they go on, and set forth another larger Remonstrance in Justification of all their Proceedings; in which they had this bold Expression, *That now they had brought their Work to such an height and degree of Success, that nothing seemed to be left in their way able to hinder the full Accomplishment of their Desires, unless God in his Justice should send a grievous Curse upon them.* Dugd. Hist. p. 93.

Then within three days after they sent a Petition to the King, in the Name of both Houses, which was deliver'd to him at York; wherein they boldly blamed him for the Breach of his many fair Promises and Pretences, and desired him to disband his Guard, it being a cause of great Jealousy and Danger to the whole Kingdom: otherwise they told him, That they should employ their Care and utmost Power to secure themselves and future Parliaments, and to preserve the Peace and Quiet of the Realm. And shortly after they published a third Remonstrance, still justifying their former Actions, and farther blaming him for every thing he had done, and challenging the Obligations of his Oath (upon that equivocal Construction of *quas Vulgus elegerit*) to pass all Bills which they should tender unto him. About this time also they removed the Magazine from Hull to the Tower of London; and farther voted, That whosoever should lend or bring any Money into this Kingdom upon the King's Jewels, &c. should be adjudged an Enemy to the State. Id. p. 94.

M. But had they not a plausible Defence to make for this, if they were satisfied that the King had raised this Guard not only upon pretence to secure his Person, but indeed to seize Hull, with the Magazine of Arms there, in order to make war against the Parliament? And were not the Crown-Jewels now ready to be pawn'd by the Queen in Holland, to buy Arms and Ammunition for the same purpose?

F. I can easily take off this Objection; for sure it was high time for his Majesty to provide for his own Safety, when the Parliament had some time before began to borrow all the Money and Plate they could upon the *Publick Faith*, as they then called it: And in this the Citizens of London shewed themselves so zealous, that they not only brought in great Quantities of Plate, but their Wives deliver'd up their Caudle-Cups, Thimbles, and Bodkins, to maintain the *good old Cause*; which their Preachers so highly encouraged, that they denounced all those, who refused to contribute to it, accursed from God, cunningly applying that Text to their present purpose, *Curse ye Meroz, &c.* I suppose you know well enough what follows, without my repeating it. Judg. 5. 23.

And farther, as to his Majesty's Guard, was it not as lawful and necessary for him to have one, as the Parliament, who had raised one (as they pretended) for their own Security several Months before? But indeed the prevailing Faction in the two Houses represented every thing they did themselves as very just and lawful; but as if they had been the sole and supreme Power of the Nation, they declared the same thing, when done by the King, as illegal and arbitrary: for he (poor Gentleman) was wholly to submit to their dictates, and lie at their mercy; as appears about this time, by their seizing of *Portsmouth*, and all other strong places near London, into their hands, together with the Royal Navy, and then passing that strange Vote above-mention'd, upon his Majesty's raising but one Regiment of Foot, and a few Horse, for his own Security.

M. But pray, Sir, tell me what effect these violent Proceedings then wrought upon the Minds of the chief of the Nobility and Gentry of the Kingdom.

F. I thank you for minding me of it; and I must now take notice, that not long after his Majesty's coming to York, and continuing there, many of the chief Nobility, as likewise of the Members of the House of Commons, with other Gentlemen of Note and Estates, being satisfied in their Consciences of the Justice of his Cause, from his Majesty's Declarations, and the whole Progress indeed of Affairs, resorted to him at that City; and the Lord Keeper Littleton himself, tho at first he seemed inclinable to the Parliament in the business of

of the Militia, yet now, having deliver'd the Great Seal to one whom the King had sent for it, he presently after followed it himself, and then had it committed to him; and his coming in at that time very much conduced to his Majesty's Service, as being a Man of great Courage, Parts, and Learning. Not long after his Arrival, upon his Majesty's Declaration that he would not require any Obedience from such as attended him, but what was warranted by the known Laws of the Land; and that he would defend the Protestant Religion established by Law, the Liberties of the Subject, and Privileges of Parliament, against which he would not engage them in any War, unless it were for his own necessary Defence: Thereupon the Lord Keeper, together with the Duke of *Richmond*, the Marquis of *Hertford*, and divers other Earls and Lords, to the number of above forty, subscribed in Writing a Promise, whereby they engaged themselves not to obey any Orders or Commands whatsoever, not warrantable by the known Laws of the Land; and farther, engaged to defend his Majesty's Person, Crown and Dignity, together with his just and legal Prerogatives, against all Persons and Power whatsoever: as also to defend the true Protestant Religion, established by the Law of the Land, the legal Liberties of the Subjects of *England*, and just Privileges of his Majesty, and both his Houses of Parliament. And lastly, they engaged themselves not to obey any Rule, Order, or Ordinance whatsoever, concerning the Militia, that had not the Royal Assent. This was dated the 13th of *June* 1642.

M. These were indeed very fair Protestations from Persons of so great Worth and Honour; but pray what effect had these Proceedings upon the two Houses at *Westminster*?

Dugd. p. 95.

F. Why, just none at all; for I cannot but also observe, that a few days before this the two Houses, being flushed with their Success, and confident of their own Power, sent down to the King certain Proposals for a Peace and Agreement, which were called the *Nineteen Propositions*; by which they not only demanded the whole Power of the Militia, but also in effect the whole Regal Authority into their hands: unto which he soon after returned a full and clear Answer by the Marquis of *Hertford* and Earl of *Southampton*.

Rush. p. 551.

To second these Propositions, within four days after they set forth another bold Declaration against his Proclamation of the 27th of *May*, whereby he had forbid all Obedience to the Parliament's Ordinances for the Militia: now (in opposition thereto) they declared it to be void in Law, requiring all Officers to muster, raise, march, and exercise according to their late Ordinance, assuring them, for so doing, of Protection from both Houses of Parliament.

Dugd. p. 96, 97.

Whit. p. 57.

And within few days after this, they sent out an Order, in the name likewise of both Houses, with fresh Proposals for the bringing in of Money and Plate; as also for providing Horses, Horsemen, and Arms, in pursuance of their "late solemn Vow and Protestation, for suppressing the traitorous Attempts (as they called them) of those wicked and malignant Counsellors, who sought to engage the King in the War against his Parliament; and likewise with Instructions for the Deputy-Lieutenants to proceed therein, themselves first making Subscriptions accordingly that very day." And about the same time they sent down divers of the most active Members to execute their Ordinance for the Militia, in the Counties of *Leicester*, *Lincoln*, *Essex*, *Kent*, &c. who infused into the People strange Apprehensions of very great Dangers, that so they might be the better prepared to take up Arms in their defence (as they pretended.) After this they borrowed Money, Plate, and other things, of the Inhabitants of the City of *London* on the Publick Faith, for the buying of Arms, and raising of Men, under a pretence of a Guard for both Houses; notwithstanding the King had sent a Letter to the Lord Mayor, Aldermen, and Sheriffs of *London*, forbidding to give or lend any Monies, or provide any Horses or Arms; since it was only out of Malice given out, that he designed to make war upon the Parliament.

This I the more particularly take notice of, for you to observe how the two Houses were providing all things ready for a War themselves, whilst the King had as yet neither Men, Money, nor Ammunition, and was hitherto attended with no more than his ordinary Retinue: So that all the effect his Majesty's Letter produced, was only an Order, in the name of both Houses, That the Deputy-Lieutenants throughout the Kingdom should tender Propositions to the
several

several Counties, for raising of Horse for the Service of the King and Parliament: and soon after that, a Declaration of both Houses was issued out, whereby they justified their raising of Forces, alledging them to be for maintenance of the Protestant Religion, the King's Authority and Person, the free Course of Justice, the Laws of the Land, Privilege of Parliament, &c. forbidding any Officers whatsoever to spread that Paper, (for so they stiled his Majesty's Letter) justifying their former Votes, that the King intended to levy War against his Parliament; intimating that neither his Majesty's Commands nor Threats could withdraw or deter such as were well affected to the Publick, from contributing their Money, Horses, and Plate.

M. But pray, Sir, what effect had these Declarations?

F. I'll tell you as fast as I can: in short, they fully answer'd their Expectations; for (having thus deluded the People) large Proportions were daily brought in, and the County of *Essex* alone contributed twenty seven thousand Pounds and upwards, and eight hundred Horse; *Hertfordshire*, eight thousand Pounds, and three hundred Horse, &c. as appears by the Calculation thereof, made upon the 20th of *August* ensuing. The King therefore, taking these their violent Practices into Consideration, and that they had set up Lieutenants and Deputy-Lieutenants in all Counties, declaring his Commissions of Lieutenantancy illegal; upon mature Deliberation and Advice (about this time) he issued out his Commissions of *Array* into all parts of the Realm; which Course had been antiently used by his Royal Progenitors, for prevention of Invasions, or suppressing of any Insurrections, and approved by divers antient Statutes. And thereupon he set forth a Proclamation, informing all his loving Subjects of the Lawfulness and Use of them, commanding their Obedience thereunto; which Commissions, the Lord *Strange*, Son to the Earl of *Derby*, in *Launceashire* and *Cheshire*, the Earl of *Huntington*, and Mr. *Henry Hastings* his Son, (afterwards Lord *Loughborough*) in *Leicestershire*, with others in those Counties, to whom they were directed, did first put in execution, but not without great opposition from the Commissioners of the Militia appointed by the late Ordinance of both Houses, as you will hear farther by and by. Dugd. p. 97.

But hereupon the Members at *Westminster* published a large Declaration, in the name of both Houses, representing those Commissions of *Array* to be contrary to the Laws of the Land, destructive to the Liberty and Property of the Subject; yea (if they might be believed) so full of Danger and Inconvenience, that it would bring a heavier Yoke of Bondage upon them, than any that had been taken away by this Parliament. Their factious Emissaries were in the mean while employ'd in sundry parts of the Realm, to persuade the People that those Commissions were to reduce the Estates of all the Yeomanry of *England* to ten Pounds *per annum*, and to enslave them beyond all expression: and lest those, who were thus seduced by these their subtle Illusions, should receive any satisfaction from his Majesty's gracious Declarations, whereby the Uprightness of his Actions, and Candour of his Intentions, might any ways appear, they sent out Orders, strictly forbidding the publishing of them, promising Protection from the Parliament to those who should refuse so to do. Rush. p. 661; ad 667.

But to make short of the rest of this Narrative of matter of fact; after both Houses had set out two other long and specious Declarations, wherein they pretended their whole Endeavours to be for his Majesty's Honour and Safety, the regaining the antient Laws, Rights, and Liberties of the Kingdom, which had been so much invaded, the settling the Protestant Religion in Peace and Purity, &c. they at the same time tax'd the King with an Endeavour of a Change both in Religion and Government, as also with Breach of solemn Protestations; and that he had already begun a War against them, being seduced by Popish Counsels, and a malignant Party, who had design'd nothing but Slavery and Confusion: and that this gave them a just occasion to raise Forces for the Defence of Religion and the Laws of the Land. To which, tho his Majesty published full and rational Answers, yet the Party at *Westminster* and the adjacent Counties were so prepossessed with Prejudice, that they had little or no effect. Rush. p. 691, 757.

M. But what was the Issue of these Declarations?

F. Why, from Skirmishes in Paper, they proceeded by degrees to real Hostilities; for so soon as the Parliament had prevailed upon a great many Persons

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of the City of *London*, and eighty Miles about it, to bring in their Mony, Plate, and Horses upon the publick Faith (as they called it) they began therewith to buy Ammunition, and to raise Men, tho they were not formed into an Army till some time after.

Id. p. 680, 684,
685.

May's Hist.
p. 109.

In the mean while the War was in a manner begun by divers petty Conflicts in several Counties, between the Commissioners whom the Parliament had order'd to muster and command the Militia, and those other Commissioners, who acted for the same purpose by virtue of the King's Commissions of *Array*, grounded on the Statute of the 5th of *Henry* the Fourth; which being by both Houses voted illegal, and against the Liberty of the Subject, thereupon happen'd many petty Engagements in several Counties between the Trained-Bands in those places, which were divided into two different Parties, of the King, and the Parliament, some of the Nobility and Gentry siding with the one, and some with the other, according to their different Interests and Principles: as particularly in *Lancashire*, where the Lord *Strange*, Son to the Earl of *Derby*, having raised great part of the Militia of *Lancashire*, with an intent to seize *Manchester* for the King's Service, was repulsed by Sir *Tho. Stanley*, and others, with the loss of one Man on the Parliament's side, which is supposed to be the first Blood that was shed in this unhappy Quarrel; and not long after the like Contests happen'd in *Oxfordshire*, *Dorsetshire*, and *Warwickshire*, and that with various Success, and the loss of some Men on either part.

M. But you have not yet told me what the King hath been doing at *Hull* all this while, which seems to have been the main business of this Summer.

F. I shall tell you as fast as I can; but I could not do it till I had given you an account of the Success of this great Affair of the Militia. Sir *John Hotham* having now provided his Garrison of *Hull* with Men and Ammunition, the King about the middle of *July* resolved to besiege that place; and having raised a small Army of about three thousand Foot, and a thousand Horse, out of the Militia of *Yorkshire*, marched against the Town, tho but with ill Success; for so soon as the Governour heard of their Approach, he immediately pulled up the Sluices, and laid all the low Grounds about the Town under Water: so that all that could be afterwards done, was to block it up, and reduce it by Famine.

May, p. 92, 93.

But the Garrison in *Hull* would not let it go so far, but boldly sallying out to the number of about five hundred Men, under the Command of Sir *John Meldrum*, they beat off the King's Forces, which consisting chiefly of the Country Trained-Bands, presently ran away; and the Horse being thus deserted by the Foot, quickly followed them towards *Beverly*: but upon the retiring of the Parliament-Party, the Siege was again renewed, but was some time after quite raised. When the Governour had received fresh Supplies from *London*, Sir *John Meldrum* made another Sally, and killing about twenty Men, and taking about as many more Prisoners, and setting fire to the King's Magazine of Gunpowder and other Ammunition, it so discouraged him, that by the Advice of a Council of War, he resolved to raise the Siege, and retire again to *York*; and so the Summer passed, till the King, by a Reinforcement of his Army, set up his Standard at *Nottingham*.

M. But I forgot to ask you what became of the Fleet all this time; and how it came to pass that the King made no use of it to strengthen and block up the Town of *Hull* by Sea?

F. I thank you for putting me in mind of this, and I will give you an easy Answer to it. In short, the Parliament had now made themselves masters of almost the whole Royal Navy, and putting out Sir *John Pennington*, Admiral for the King, gave the Earl of *Warwick* the chief Command of it; who undertook it, notwithstanding the King's Commands to the contrary; and immediately sailing out with a strong Squadron of Men of War, easily reduced all such Ships, whose Captains refused to obey his Orders: and in the Downs they seized upon a Man of War, then bound for *Newcastle* for his Majesty's Service, together with a small Vessel laden with Gunpowder; which, as it proved a great addition of Strength to the Parliament, so it was a great weakning and disappointment to the King's Interest.

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M. This Action of my Lord of *Warmick* was indeed very bold and violent, and suitable to the Character of that Nobleman, who afterwards proved one of the greatest Enemies the King had. But pray, Sir, proceed.

F. Matters being arrived to this height between the King and the two Houses, they did not long continue in this uncertain State; but after a tedious Debate in the House of Commons, notwithstanding the Opposition of divers moderate Men of their own Party, it was at last voted on the 12th of *July*, and afterwards agreed to by the Lords, "That an Army should be raised forthwith" (as they pretended) for the Safety of the King's Person, the Defence of both Houses of Parliament, and of those who had obey'd their Orders and Commands; and for preserving of the true Religion, the Laws, Liberty, and Peace of the Kingdom." And then they also voted, That the Earl of *Essex* should be General of it, with whom they declared they would live and die. All that in their Votes shewed of any Moderation, was, That they then also voted a Petition to be sent to his Majesty, to move him to a good accord with his Parliament, and to prevent a Civil War; but it was only to this effect, That he should dismiss his Forces from about *Hull*, *Newcastle*, and other places, and recall his Commissions of *Array*, and return nearer to his Parliament, and hearken to their Advice: And that they would then cease those Preparations they had made for their Defence, and would put the Town of *Hull* in the same condition as it was before Sir *John Hotham* brought his Forces into it. But as for their Ordinance for the Militia, they insisted to have it settled by a Bill, in such a way as should be honourable and safe for his Majesty, most agreeable to the Parliament, and effectual for the Good of the Kingdom; which signified no more in general Terms than to tell the King, that the Militia should be settled as they pleased themselves. This was not to be done neither, unless the King would leave all Delinquents (that is, all those who had obey'd his Orders) wholly to their Justice, or rather Discretion.

Whitl. p. 58.
Rush. p. 753,
&c.

Rush. p. 601.

But his Majesty having dispatched the day before, being the 11th of *July*, a Message to them, upon his sending Forces to *Hull*, requiring that Place to be deliver'd to him, together with his Proclamation; wherein he set forth how ill Sir *John Hotham* had dealt with him by divers Hostilities committed in and from the said Town; and of the Ships under the Command of the Earl of *Warmick*, keeping that Port and Passage by Sea to it, in order to seize such Ships as were employ'd in his Service: he summons all his good Subjects in general to come into his Assistance, for the reducing it to his Obedience; and concludes with a Protestation, That he would continue to defend the true Protestant Religion, as it is by Law established in the Church of *England*, the Laws of the Land, the Rights and just Liberties of his Subjects, equally to and with his own just Prerogative; and other things, needless here to be repeated.

But before the receipt of this Message, the two Houses having already prepared the above-mention'd Petition, they resolved to return no other Answer to it than the Petition it self; to which, being deliver'd by the Earl of *Holland*, Sir *John Holland*, and Sir *Philip Stapleton*, the King immediately after returned a very reasonable and solid Answer; wherein he bids them remember, That (which all the world knows) his Majesty was driven from his Palace of *Whitehall* for the Safety of his Life, and that not till both Houses of Parliament, upon their own Authority, raised a Guard to themselves (having gotten the Command of all the Trained-Bands of *London* for that purpose) without the least colour or shadow of Danger; That they usurped a Power by their pretended Ordinance (against all Principles of Law) over the whole Militia of the Kingdom, without, and against his Majesty's Consent; That they took possession of his Town, Fort, and Magazine of *Hull*, and committed the same to Sir *John Hotham*, who had shut the Gates against his Majesty, and by force of Arms deny'd Entrance thither to his Person; That they justify'd this Act, and took Sir *John Hotham* into their Protection for whatsoever he had done or should do against him: And all this while his Majesty had no other Attendants than his own menial Servants.

Id. p. 603.

Id. p. 605.

That as for his Forces, he should not dismiss them till *Hull* was again reduc'd to his Obedience; and as for the Commissions of *Array*, he insisted that they were legal, and which he promises to prove so by a Declaration to be shortly

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publish'd. As to his coming nearer to his Parliament, he said, he hath express'd himself so fully as to his several Messages, Answers, and Declarations, and so particularly avow'd a real Fear of his Safety, upon such Instances as cannot be answer'd, that he hath reason to take himself to be somewhat neglected. He says, he is also sorry, that since upon such manifest Reasons it is not safe for his Majesty to come to them, both his Houses will not come nearer to his Majesty, or to such a place where the Freedom and Dignity of Parliament might be preserv'd. And as for the Tumults that had driven him from *London*, he should be glad to hear of some Examples of the punishing the Authors of them; which he knows not how to expect, since the House of Commons had already declar'd, that they knew not of any such Tumults, tho the Peers had desired, both for the Dignity and Freedom of Parliament, that the House of Commons would join with them in a Declaration against them, which they refused: and notwithstanding the Complaints that he himself had made of things of that nature, yet they had neglected to enquire out the Authors of divers seditious Actions, Speeches, and Writings. Then he proceeds, That as for the leaving Delinquents to the due Course of Justice, his Majesty is well assured he hath given no shelter to any such: But if by Delinquents, such are understood, who refuse to submit to the pretended Ordinance of the Militia, and that of the Navy, or to any other which his Majesty hath not consented to, or those who had published his Proclamations, or had read his Messages and Declarations, (as divers Ministers about *London* and elsewhere had done) or such as had lent his Majesty Money in the Universities, or any other places; his Majesty declares to all the World, That he will protect all such with his utmost Power and Strength, it being no less his Duty to protect those who are innocent, than to bring the guilty to condign Punishment; of both which the Law is to be Judge. And then concludes with shewing, that much greater Delinquents act on their side; yet agrees that all Delinquents shall be proceeded against according to the known and unquestionable Rules of the Law.

Having said thus much of the Particulars of their Petition, he then proceeds to complain, that since the sending thereof they had beaten their Drums for Soldiers against him, armed their own General with a Power destructive to the Law and Liberty of the Subject, and chosen a General of their Horse; That Sir *John Horham*, besides his burning and drowning the Country, had seized his Wine and other Provisions for his House; and therefore demands, That the Town of *Hull*, with its Magazines, be forthwith deliver'd into the hands of such as he shall appoint; That his Navy be forthwith deliver'd into such hands as he hath directed for the Government thereof; the detaining of it, after his Majesty's Directions publish'd and receiv'd to the contrary, and employing his Ships against him in such manner as they are now used, being notorious High Treason in the Commanders of those Ships: And then concludes with a Demand, That all Arms, Levies, and Provisions for a War, made by Order of both Houses (by whose Example his Majesty hath been forced to make some Preparations) be immediately laid down, and the pretended Ordinance for the Militia, and all Power of imposing Laws upon the Subject, without his Majesty's Consent, be disavowed; without which the same Pretence will remain to produce the same Mischiefs.

These things being done, and the Parliament adjourn'd to a safe and secure place, his Majesty promises in the Presence of God, and binds himself in all Confidence and Assurance on the Affections of his People, that then he will instantly and most chearfully lay down all the Forces he hath raised, and discharge all his future and intended Levies, that there may be a general face of Peace over the whole Kingdom; and then he will repair to them, and desires all Differences may be freely debated in a Parliamentary way, whereby the Law may recover its due Reverence, the Subject his just Liberty, and Parliaments themselves their full Vigour and Estimation; and so the whole Kingdom a blessed Peace, Quiet, and Prosperity.

And if these Propositions should be rejected, his Majesty doubts not of the Protection and Assistance of Almighty God, and the ready Concurrence of his good Subjects, who can have no hope left them of enjoying their own long, if their King must be oppress'd and spoil'd, and must be remediless: And tho his Towns, his Ships, his Arms, and his Money be gotten and taken from him,
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he hath a good Cause left, and the Hearts of his faithful People, which, with God's Blessing, he doubts not will recover all the rest. And then his Majesty concludes, That he expects a full and positive Answer by Wednesday the 27th of this Instant *July*; till then he would not make any Attempt of Force upon *Hull*, hoping in the Affection, Duty, and Loyalty of the Petitioners; and that in the mean time no Supply of Men be put into *Hull*, or any of his Majesty's Goods taken from thence.

M. These Offers appear very fair and reasonable; but what Return did the two Houses make to them?

F. I'll tell you presently: To this Answer the Lords and Commons a few days after sent the King a Replication by the Earl of *Holland*; the effect of which was, to let him know that they could not agree to his Majesty's Demands for the Delivery of *Hull*, and the Magazine, together with the Navy, or the recalling the Ordinance of the Militia; the laying down of all Arms raised by Authority of the two Houses of Parliament, and adjourning themselves to some other place: because the reason wherefore they took the Town of *Hull*, with the Magazine and Navy, into their custody; and why they passed the Ordinance of the Militia, and made Preparations of Arms; was only for the Security of Religion, the Safety of his Majesty's Person, Kingdom, and Parliament: all which they did see in evident and imminent Danger. From which, when they shall be secured, and the Forces of the Kingdom shall not be used for the Destruction thereof, they shall then be ready to withdraw the Garison of *Hull*, to deliver the Magazine and Navy, and settle the Militia by Bill in such a way as shall be honourable and safe for his Majesty, most agreeable to the Duty of Parliament, and effectual for the Good of the Kingdom, as they have professed in their late Petition. And for adjourning the Parliament, they apprehend no reason for his Majesty to require it, nor Security for themselves to consent to it: And then conclude, That his Majesty need not fear returning to *London*, considering the Loyalty and Fidelity of that City to his Majesty. And as for laying down of Arms, they excuse it, till the Causes that had moved them to take them up shall be removed; and then they say, when this is done, they shall be willing to forbear making any farther Preparations, &c. But of all this they make themselves the sole Judges.

But I cannot here omit, that tho both the King and Parliament commanded these their Declarations, Messages, and Petitions to be printed and published, and also to be read in Churches; yet the latter either mistrusting the Justness of their Cause, or fearing lest the People should receive any due Information concerning the Justness of the King's Cause, and the Sincerity of his Intentions, straitly forbid any Ministers or other Officers from reading or publishing any Declarations, Messages, or Answers sent them by the King; and those that refused to obey, were committed to Prison: as in particular they dealt with Sir *Richard Gurney*, Lord Mayor of *London*, who for publishing the King's Commission of *Array*, was not only deposed from his Office, but also committed to the Tower, where he lay a long time.

I have given you the more particular Account of this Petition, and the King's Answer, with their Replication thereto, that you may the better observe how things stood between the King and the two Houses, and who were most in the fault, that they could by no means come to a better Understanding. I shall therefore now proceed further to shew you how they daily grew into greater Acts of Hostility, till it came to that height as engaged the whole Nation in a Civil War, which ended in the Ruin of the Royal Party, the Murder of the King, and the enslaving of the whole Nation.

M. But pray, Sir, before you go on farther, tell me whether, according to your and their Principles, the Parliament had not a fair colour for what they did; for who, said they, can or ought to judge when the Kingdom is in danger, or that the King goes about to destroy the Liberties of the People, and to make War upon the Parliament, but themselves, the Representatives of the Nation, and *sole Judges and Interpreters of what is Law*? Now when they had thus solemnly declared their own sincere Intentions, that they did not design to begin any War against the King, but only to take him from his evil Counsellors, and therefore still earnestly beseeched him to return again to his Parliament at *London*; and he refused to do it, but staid in the North, providing Arms, and raising

raising Men for his Guard; why should it be supposed that this was for any other end than to make war upon the Parliament?

F. I grant that this was the Effect, and indeed chief, if not only Reason, in all their Declarations and Remonstrances, why the Nation should put full Trust and Confidence in whatever they said; yet the King did not fail in his Messages to them, as also in his printed Declarations, in answer to whatever could be urged upon this Head, to set forth, that the Parliament were not the sole Judges and Interpreters of the Law without himself: for upon that ground (unless the two Houses should be supposed infallible, and not capable of judging or acting any thing amiss) they might engross all the Power of the Kingdom to themselves, and so leave him the empty Title and bare Name of a King, as they had in effect done by their Ordinance concerning the Militia; over which they asserted, that he had no more Authority but as it was declared, and issued by and from themselves. Now granting it to be according to their own Allegation, that the King was one of the three Estates of the Kingdom (whereas he is indeed the Head of the whole Body Politick) yet even upon this Supposition they could not, nor ought to judge and declare what was Law without him. For supposing him to be but equal with them, it is a known Maxim among Equals, that *Par in parem nullam habet potestatem*, and that in distinct Persons and Powers each of them must be endued with an independent Right to act and judge for themselves: Therefore since they had made the King's stay in or near *London* unsafe for him, by the Tumults raised and fomented by the Faction in both Houses, could any but himself judge when his Person was in danger, and what were the best means for his own Security? If therefore they thought it convenient several months before to have a Guard assigned them for their Defence against a malignant Party, might not the King have a like Right to a Guard for his Defence, against those that had now got all his Fleet and naval Stores, with his Magazines of Arms in the *Tower* and at *Hull*, into their own hands, whether he would or not? And had by thus violently invading his Prerogative without his Consent, not only put themselves into a Posture of War, but indeed actually begun it, by the Commissions they had issued out for mustering the Militia of the Kingdom, before the King's Commissions of Array were actually put in execution for the same purpose; but especially after they had avowed and justified *Hotham's* shutting him out of *Hull*, and thereby treated the King as if he had been a publick Enemy to the Nation?

To conclude: If they had their Fears and Jealousies of his Proceedings, why might they not be mutual, and he likewise have the same of theirs? For when once Men cease treating each other like Equals, by Reason and Persuasion, and come to Force, they are then discharged of all Civil Obligations, and in that state it is lawful, *vim vi repellere*, to repel Force by Force. Therefore since neither the King nor Parliament could agree upon these Points, and that neither of them were infallible, all they could do was to appeal to the People which side they would take and adhere to: tho' as their Condition was very unhappy, whilst they knew not which of these contending Powers to follow or obey, yet certainly those that took part with the King had the Law on their side; since by the Statute of the 11th of *Henry VII.* none can be called in question for assisting the King in his Wars against his Enemies, whether foreign or domestick.

M. But pray, Sir, tell me then why you have not hitherto called the two Houses, and all that assisted them, downright Rebels and Traitors, as certainly they were (according to our old Church-of-England Principles) notwithstanding they were at first chosen for the Representatives of the Nation? And if the Cavaliers had (as you say) the Law on their side, then the other Party acting against Law, must deserve that Title by your own shewing.

F. I do not at present concern my self with what they were indeed, but shall decline giving them or their Adherents those hard Names of Rebels and Traitors, for several Reasons: As first, Because I am now to declare my self directly of no Party, but to shew wherein the King and Parliament were both to blame, as certainly they were, as well in the beginning, as carrying on of that unhappy Civil War. And in the next place, I forbear calling them plain Rebels, because the King having made the two Houses, by his own Act, not

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subject to any Dissolution or Prorogation, otherwise than by their own Consent, had so far made them independent upon himself, and had given them thereby a Power of looking into and censuring his Actions, whether he would or not; especially since they put such a specious Gloss upon all they did, that it was hard for many well-meaning and prudent Men of the Long Robe among them to believe their Party in the wrong, but that they acted in defence of the Protestant Religion, and the Liberties and Privileges of the Nation, with an Acknowledgment of a Submission to the King's Authority, as far as they thought it according to Law. I shall not call them direct Traitors for what they at first did, till the Independent Party in the House of Commons having got the ascendant of the Presbyterians, and also beaten the King in the Field, and had his Person delivered to them by the *Scots*, not only kept him in Prison, but voted no more Addresses should be made to him, and took the whole Power both Civil and Military into their own hands; and from that Period of Time I shall not stick to call them Traitors: Since no Man can justify the imprisoning of the King, without committing Treason, by the Act of the 25th of *Edward III.* wherein I find no Exception, whether it be done by one or both of the Houses of Parliament, or by any other Persons whatsoever; since they are all the King's Subjects, as well in their politick as private Capacities.

I shall now return from whence I have digressed, and proceed with the Narrative of what remains of this unhappy Civil War, till the Murder of the King. The Parliament having raised a powerful Army under the Command of the Earl of *Essex* (as you have already heard) the King thereupon issued a Proclamation, whereby that Earl and all his Adherents were declared Traitors, yet with Pardon to such as should return to their Obedience within six days. But this gracious Offer was so much contemned, that so soon as it came to their notice, the two Houses published a Declaration in their Names, containing many shameful Invectives against his Majesty, declaring all such to be Traitors that were Contrivers or Countenancers of this last Proclamation of *August 9.* and that if his Majesty would disband his Forces, abandon those wicked Counsellors, and hearken to the wholesome Advice of his Great Council, they would endeavour then to make him and his Posterity as great and rich as any Prince that ever swayed the Scepter. But these were but specious Pretences: for they had already taken the Town of *Portsmouth* by Siege, together with *Dover-Castle* by Surprize; and having now borrowed an hundred thousand Pounds of that Mony that had been raised for the Service of *Ireland* (with which the King not long after taxed them in a particular Message) they proceeded to raise fresh Forces, till they had compleated an Army of above thirty thousand Horse and Foot; whilst the King's Forces were as yet weak and inconsiderable, for want of Mony to pay them: till going down into the Borders of *Wales*, as far as *Shrewsbury*, and there having some Mony lent him, and good store of Plate brought in from divers of the loyal Nobility and Gentry of those Parts, he therewith raised so considerable a Force, that he was some time after able to give the Earl of *Essex* Battle, as he was marching in pursuit of him towards *London*.

But I ought to have first told you, that on the 25th of *August* preceding, the King had erected his Standard of War at *Nottingham*, tho he then wanted a compleat Army to encounter the Parliament, till he found means to recruit it, as I have now related: which Particular deserves your notice, since the Parliament declared that this was the beginning of a War against them; whereas indeed the War was actually begun some months before on their side, by *Hotham's* seizing upon and keeping the King out of *Hull*, and by their reducing all other Towns and Places of Strength into their power, and by their Ordinance for the Militia, and seizing the Forces of the Kingdom into their own hands, ordering a vigorous Resistance to be made against all such as should dare to oppose them, by virtue of the King's Commission of Array, as hath been already mentioned. But I cannot omit taking notice, that immediately upon his Majesty's Arrival at *Nottingham*, he sent the two Houses a gracious Message, wherein he told them, that considering the many Mistakes which had arisen by the Messages, Petitions, and Answers, that had passed between him and the two Houses of Parliament, and which might be prevented by

Rush. ib. p. 769.

Id. p. 771.

May's Hist. &c. p. 107.

Rush. p. 784.

by some other and nearer way of Treaty ; he therefore proposed, that fit Persons should be enabled on either side to treat of and conclude all Differences between them, for the publick Peace of the Kingdom, and farther promised all Safety and Encouragement to those that should be so appointed by the Parliament ; and concludes, That if this Proposition should be by them rejected, *God would absolve him from the Guilt of the Blood which must be spilt.*

Id. p. 735.

To which the two Houses returned a very high and positive Answer, wherein they refused to enter into any Treaty till the King had recalled his Declarations, whereby the Earl of *Effex*, and both Houses of Parliament, with all their Adherents and Assitants, had been declared Traitors, and that his Majesty take down his Standard ; since whilst they remained in that state, they cannot (as they said) by their fundamental Privileges of Parliament, give him any other Answer. To this the King however soon returned a short and fair Reply : First he protested that he never intended to declare both his Houses of Parliament Traitors, or set up his Standard against them ; and therefore to remove all Scruples which might hinder the Treaty he so much desired, he promised, so that a Day were appointed by them for revoking their Declarations against all Persons as Traitors for assisting him, he would then, on the same day, willingly recal all his Proclamations and Declarations, and would also take down his Standard in order to a Treaty.

Id. p. 786.

Id. ib.

But all that he could obtain from the two Houses, was, That they could not recede from their former Answer ; and positively insisted, that the King should first recal his Declarations, and take down his Standard, and leaving his Forces, return to his Parliament, without any thing to be done or yielded to at all on their side ; saying, they would not allow themselves to be set in equal Ballance with those Persons, whose Counsels had still prevailed to hinder the Relief of *Ireland* : and immediately published a Declaration, that the Arms they were forced to take up for the Preservation of the Laws and Liberties of the Kingdom, could not be laid down, until the King should withdraw his Protection from such Persons as had been voted Delinquents by both Houses, and leave them to the Justice of the Parliament.

May's Hist.
p. 128.

To this the King, within a few days after, made another Reply ; the Substance of which was, That he could neither do nor offer any more than he had done already, and that he should think himself clear and innocent from any Blood that might be spilt in this Quarrel, praying God so to deal with him and his Posterity, as he desired to preserve Religion, Law, and the Liberty of the Subject, and Privilege of Parliament. The two Houses Return to this was in effect no more than to repeat their former Answer, That whilst the King thinks himself bound in honour to protect such Delinquents, in whose Preservation the Kingdom cannot be safe, nor the Rights of Parliament at all maintained ; they cannot enter into any farther Treaty with his Majesty, besides other reflecting Language ; too long to be here repeated. And I have been the more particular in relating these last Petitions, with their Answers, since it will from thence plainly appear, how unwilling the King was to enter into a State of War with the prevailing Faction in the two Houses, who would come to no other Terms with his Majesty than an Indemnity for themselves, and a Power to inflict what Penalties they pleased on all such as had any ways assisted him in this Quarrel ; which was utterly to discourage and deter all Persons, that should go about for the future to aid or protect him from their Insults and unjust Invasions of his known Prerogatives. Thus did they sacrifice the publick Peace of the Nation to their own private Malice and Revenge.

I shall now draw to a Conclusion, and shall but lightly mention the particular Actions of this unhappy War, and what followed thereupon ; as the Battels of *Edge-Hill*, *Marston-Moor*, and *Naseby*, and other Places, in most of which the Parliament-Army obtained compleat Victories, under the fortunate Conduct of their two Generals, the Lord *Fairfax* and *Oliver Cromwel* ; till at last the King, being reduced to the lowest Ebb of Fortune, was forced to quit *Oxford*, and fly to the *Scotish* Army for Succour : By whom he being some time after given up to the Parliament, upon such Terms as had been agreed between them, he was by them confined to some of his own Houses, and upon his Refusal to pass such Bills as they offered to him, which were in effect to divest

divest himself of all his Regal Power, they thereupon voted, That no more Addresses should be made to him in any kind; which was in effect to disown him for their lawful King. And tho during the War, as well as after it was ended, there were several Treaties set on foot for the Accommodation of those unhappy Differences between the King and the two Houses; yet they still proved abortive, through the predominant Humour of some leading and factious Men, either of the one or the other Party, who not desiring to see an end of the War, still insisted upon higher and more exorbitant Conditions than were fit either for the King or Parliament to grant, with any Honour or Safety to themselves; as happen'd particularly at the Treaties of *Oxford* and *Uxbridge*, at the latter of which nothing would serve the prevailing Parties of both Houses, but the King's absolute yielding up the Power of the Militia, and the total Abolition of Episcopacy, and the Book of Common Prayer, and giving up all those that had adher'd to him, and assisted him in the present War, to be fin'd and imprison'd, and punish'd at their discretion.

But when the Presbyterian Faction in the House of Commons was overpower'd by that of the Independent, which was back'd by *Cromwel*, and the major part of the Army, by whom no less than eleven Members were forced to quit the House at once, and most of them to fly beyond Sea; after this, and that the King had been frightned from *Hampton-Court*, where *Cromwel* and the Officers of the Army had for a time treated him with all seeming Freedom and Honour, till he fled to the Isle of *Wight* in disguise, and there was for some Months kept a close Prisoner: but at last, whilst *Cromwel* and his Army were gone into *Scotland*, to reduce the more moderate Kirk-Party there, which under the Conduct of Duke *Hamilton* had raised an Army (tho with ill Success) to set the King at liberty; then the major or prevailing Party of the Presbyterians in both Houses seeing their Error, and finding their Cause desperate, resolved to take this opportunity of treating and making a full and final Agreement with the King upon certain Conditions, which however hard and unequal in themselves, yet since they were somewhat more tolerable than those that had been before offer'd him, and considering in what desperate Circumstances his Affairs then were, he was obliged to submit to: and had he done so at first, he might have, by a speedy coming up to *London*, and joining his Interest with that of the Parliament and City, raised an Army sufficient to cope with that which *Cromwel* was bringing out of *Scotland*, which he had now reduced. But whilst they were insisting too long upon several unnecessary Punctilio's, the General with his Independent Army, march'd up to *London*, and soon put an end to the Treaty by a forcible Exclusion of the major part of the House of Commons, which had voted the King's Concessions satisfactory; and then the remaining part (not being sixty in all) upon the House of Lords refusing to join with them, not only voted them useless and dangerous, but also kept them from meeting any more. After which it was very easy for them to pass an Ordinance for the Trial of the King, by certain Judges appointed for that purpose, who both condemn'd him, tho he utterly denied their Power, and likewise order'd him (beyond what can be parallel'd in History) to be executed at the Gates of his own Palace: all which he suffer'd (besides many other Indignities) with the highest Patience and Christian Courage, as became the Greatness of the Character he bore.

Now I durst appeal to your self, whether there be any thing in all the Convention's late Proceedings against King *James* that came near this, either in the Original of the Quarrel, the Means of the Prosecution, or lastly, in the Issue and Consequence of the whole Affair.

M. I must confess you have given a just Account of the Beginning, Progress and Catastrophe of that unhappy Rebellion, which ended (as most of them do when they prove successful) with the Deposition and Murder of the King. And tho I do not deny but there is some difference between that and the late Expulsion of his Majesty from the Throne, yet it is not so much as to make it a quite different Case, since you your self cannot but confess, that the Issue of both their Votes have been much the same; viz. the Deposition, or (as you word it) *Abdication* of the King, and the total *Abrogation* of his Royal Authority. All the difference I can find between them, is, That in the Case of King *Charles I.* this was done when his Royal Person was in their power; but in that of

the King his Son, it was not voted till after his Departure, or rather his being driven away, since he could no longer stay here with Honour or Safety to his Person; and what they would have done had he continued here, I cannot without Horrour imagine: but it is well it proved no worse, and that they had not the opportunity of expressing their Malice against his Person as well as his Government. Therefore I desire you would now show me (since you undertake to justify all that the Convention has done in relation to the King) why they might not as well have condemn'd him to death (as the Rump Faction did his Father) as have passed that Vote, *That by his Breach of the Original Contract between the King and People, and by his deserting the Kingdom, he had abdicated the Government, and that the Throne was thereby become vacant: since I* always thought, that it had been sufficiently declared for Law by the Statute of the 12th of *Charles the Second*, which attainted the Regicides of his Father, *That neither the Peers, nor Commons separately, nor yet both of them together in Parliament, nor the People collectively or representatively, have any coercive Power over the Person of the King.* And certainly this was a fundamental Law of the Land from the very beginning of Kingly Government in this Island, notwithstanding the contrary had been preached up, and writ for, by the Leaders of the Commonwealth Faction; and much the like Doctrines have been also spread abroad, and justified of late in seditious Pamphlets and Sermons, tho veil'd over with subtle Distinctions to blind the Eyes of the People. Therefore pray let me see how you can defend this part of the Controversy.

F. I shall observe your Commands; but first give me leave to premise, that tho I will not justify the Deposition of Princes, yet I very much doubt the Truth of what you say, that it was always a fundamental Law of England, that the Estates of the Kingdom, or Parliament, *had no coercive Power over the Persons of their Kings, or could pass any Judgment on their Actions:* for that it was not a fundamental Law from the first Institution of the Government, I think I have already given you several Proofs from *Bracton*, and the *Mirror of Justices*, and shewn what was looked upon in those Times to be the Power of the Estates of the Kingdom, as to the restraining the arbitrary and illegal Actions of the King himself, his Queen, Children, and great Officers of the Crown; and what the *English-Saxons Wittena Gemots* did in relation to their Kings, upon any notorious Breaches of the fundamental Laws of the Government, or a general Violation of the Liberties and Properties of the People contrary to Law; as you may remember formerly in the Instances of King *Sigebert*, and *Edwy*, and others in the *Saxon Times*: and that the same was held lawful, and put in practice after the *Norman Conquest* (as you call it) is as plain from what two several Parliaments did in the case of two Kings, *viz. Edward and Richard the Second*; which Proceedings were also justify'd and confirm'd by the next subsequent Parliaments (as you may find in our Statute-Book) by the Acts there to be seen in the first Year of *Edward the Third*, and first of *Henry the Fourth*; tho I will not justify those Actions neither, nor affirm that Parliaments have the same Power at this day, it having been by them disclaim'd by so many subsequent Statutes.

M. I cannot deny that there are such Statutes as those you mention; but if you please more nearly to consider them, you will find that they were rather made to excuse and indemnify the Persons that had a hand in rebelling against, and deposing those Princes, than at all to justify the Actions themselves; for in that Statute of the first of *Edward the Third*, you will read it is only there enacted and declared, "That none that came over with the King that now is, "and the Queen his Mother, or none other that went with the said King in "aid of them, to pursue their Enemies, in which Pursuit the King his Father "was taken, and put in ward, and yet remaineth in ward, shall be impeached, "molested, or grieved in Person, or in Goods, in the King's, or in any other "Court, for the said Facts, nor for the Death of any Man, &c. from the Day "of the Arrival of the present King, to the Day of his Coronation." And much to the same effect is that Act of Indemnity passed in the first of *Henry the Fourth*, "That none shall be impeached or punished that assisted that King "to pursue and take *Richard the Second* and his Adherents." So that these Acts were only Pardons to such Offenders, but do no way declare those Actions to be legal, or any ways justifiable by the known Laws of the Land, or fundamental

damental Constitution of the Government. And as for the Law at present, you know it is expressly declared by the Act of the 12th of *Charles* the Second, *That not only the Command of the Militia of the Kingdom is his Majesty's undoubted Right, but that neither of the two Houses can pretend to the same; nor can levy any War, offensive or defensive, against his Majesty.* So that I think nothing can be more plain and express, than that the late Proceedings against his Majesty have been altogether unjustifiable, and contrary to Law.

F. I do not deny that what you now say is in a great part true, and our written Laws do no ways allow any Resistance, or Imprisonment of the King; but however, there are divers Actions, which, tho not justifiable by the strict Letter of the Law, yet being for the publick Good, and Preservation of the Government, and original Constitution thereof, and in cases of extreme Necessity, when done indeed, ought to be justify'd and pardon'd by subsequent Parliaments, as I have already sufficiently made out: But since we have so fully discoursed of, and, as I thought, sufficiently settled that point at our ninth Meeting, I shall say no more on that Subject now. And as to what you say in relation to the late Proceedings of the Convention against the King, I have likewise so fully answer'd all that you could alledge to the contrary at our eleventh Conversation, that I need not here make repetition; only give me leave to add, That if the two Houses of Parliament have no power to censure, and pass Judgment upon the notorious illegal Actions of the King and his Ministers, the Institutions of those great Councils are altogether in vain; since it was acknowledged by King *Charles* the First, in his Answer to the Nineteen Propositions already mention'd, *That Parliaments had sufficient Power to restrain Kings from Tyranny:* but this is always to be thus understood, provided they exercise this Power rightly, and as they ought, for due and weighty Causes, and not vent their own private Resentments and Revenge upon the King or his Ministers, for slight and trivial Occasions.

M. Admit I should grant it, yet you and your Party would gain little by that, since the Law still supposes the King can do no wrong; and all Acts that are illegal are not to be looked upon as his, but those evil Counsellors and Ministers that presumed to do them, and who are alone to suffer for them, the Person of the King being always sacred and unpunishable: and if it hath at some times happen'd otherwise in point of fact, it is by no means to be justify'd, or drawn into example. But indeed this Revolution is in one thing very singular, and without any Example, *viz.* That whereas in all former Depositions of Princes, the Indignation of the People has fallen more severely on the publick Ministers and Officers, by whom any Actions, supposed to be illegal and arbitrary, had been done, than on the Person of the King himself; as any one that reads the Histories of *Henry* the Third, *Edward* the Second, and *Richard* the Second, may observe: while in this Revolution that has lately happen'd, the King himself hath been almost the only Sufferer; and his evil Counsellors, and corrupt Ministers and Judges, have all escaped so much as any publick Sentence or Punishment: which either shews, that what they had done was justifiable according to Law, or else that the Convention was very partial to those Offenders.

But to conclude, and return to the point in question: If the Long Parliament could not legally call King *Charles* to any account for what he had done contrary to Law (as your self seems to grant) I desire you to shew me any sufficient Reasons why it should be treasonable for the Long Parliament to pass a Vote, That the King's raising a Guard at *York*, was in order to make war upon the Parliament, and a Breach of the Trust reposed in him, contrary to his Coronation-Oath, and tending to the Dissolution of the Government: and yet that the Convention's voting, That King *James* the Second, by the Breach of the Original Contract between him and his People, and by withdrawing himself out of the Kingdom, had abdicated the Government, should be looked on as legal, and according to the just Power of Parliaments. So that you must acknowledge, that the Long Parliament were invest'd with a Power of censuring the King and his Actions, and calling him to an account for them; and if they had, then the Case of King *Charles* the First, and King *James* his Son, will be much alike. But if the Long Parliament had not that Power, neither ought the Convention to have exercised it over the Actions of the pre-

sent King. And pray, Sir, tell me why the Rump Parliament should be guilty of Treason, for appointing Judges to try and condemn King *Charles*; and the Convention should be innocent, who have as good as deposed King *James*, by declaring him to have abdicated the Government, and that the Throne is thereby become vacant: since I suppose, that this Convention, tho of all the Estates of the Kingdom, meeting and acting without the King's Writ, hath no more (if so much) Authority as that rag-end of a Parliament which murder'd King *Charles*, and yet met at first by his Writ.

F. I hope, Sir, then, if I can give a satisfactory Answer to these your last Questions and Objections, you will come over to my Opinion. In the first place I own, and I think you your self must grant, that Parliaments have a Power of impeaching and punishing such evil and corrupt Ministers, as shall presume to act any thing contrary to *Magna Charta*, and the known Liberties and Privileges of the Nation, tho they did it by the King's express Commands; since they are presum'd to know the Law, and either should have refused to accept their places upon unjust and unwarrantable Conditions, or else have resign'd them, rather than obey'd the King's illegal Orders. But it is yet a higher Aggravation of the Offence, if (as some of our Judges of late) they accept of those Offices on condition to give their Judgment in point of Law, only as the Court shall direct: So that the difference between us barely lies in the true Sense and Meaning of this Maxim in Law, *That the King can do no wrong*; or if he do any in his own Person, how far he is liable to answer for it. I grant indeed, That if the King never executes any Function of the Government in his own Person, he cannot be said to do any wrong, but only those his Ministers and inferior Officers that act by such Orders: yet what if the King himself will act ministerially, and will take upon him in Person to seize those that are innocent of every thing but his arbitrary Designs; or what if he will himself put the Broad Seal to a Pardon of a notorious Enemy to the Government, that stands impeach'd by the Commons of *England*; can any one say that this is not a doing wrong in his own Person? What if he will turn his Chancellor, Chief Justices, and other Judges out of their Places, and will not admit of any new ones, but such as will sacrifice their Consciences, and blindly promise to act and give Judgments according to whatever he shall please to set up for Law? Or suppose he do in his own Person sign and issue out Orders for a standing Army in a time of Peace, not to defend and preserve, but to enslave the Nation: or suppose that being petition'd to, and desired by some of his Peers, who are *Consilarii Nati*, to abstain from making such notorious Breaches upon the Constitution, he should immediately order under his own hand the Petitioners to be clapt up in the Tower; can the Governors of that place judge whether the fault those Lords stand committed for be Treason, or only High Misdemeanor? Or lastly, suppose the King shall either refuse to call a Parliament to redress these Grievances; or if he goes about to do it, shall evidently in his own Person closet and corrupt the intended Members of it, what must be done in such cases, when all other Remedies fail? And how many of these Acts and Breaches upon the Law the late King was in his own Person guilty of, I shall not now particularly enquire into, having already spoke sufficiently upon these Points? And I wish you, or any body else, could excuse him from these personal Violations. I would farther ask you, what is to be done when he will hearken to no Advice and Remonstrances that shall be offer'd to him, to make him sensible that such Proceedings strike at the very fundamental Constitution of the Government? I say, what Course shall the whole Nation, or Parliament, as its Representative, take in such cases where the King will remain incorrigible, and will not retract what he hath done, or repair those Breaches he hath made upon the Laws?

M. I know no other Remedy, but still to apply themselves to him by Petition; and if Prayers and Tears will not do, then to observe *Bracton's* Rule, That if the King will not be amended, *expectet Deum ultorem*.

F. Truly I expected some such sort of Answer from you to these Questions: But pray tell me, what if the King is resolved still to prove inexorable, and openly to declare by all his Words and Actions, that he will govern arbitrarily by a standing Army, and doth put it in practice accordingly; do you allow the People no Remedy in that case, but only Prayers and Tears? For
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what satisfaction is it to me, my Prince's expecting the Vengeance of God for the Breach of his Coronation-Oath? Will that prove any Alleviation of the Subjects Misery, that their Prince will be damned in another World, when perhaps he himself may not believe any such thing as a Life after this? For he may be told by his Priests and Jesuits, that it is a commendable and meritorious Action in him to make himself absolute, and to trample all the Laws of his Kingdom under his feet; since otherwise he can never set up the *Romish Religion*, which upon their Principles is the only way to Salvation, and that it is lawful for him to use any means to compass it. So that unless you will suppose all Governments ought to be absolute and arbitrary, at the Will of the King, I do not see any means left the Subjects how to secure themselves from the rankest Tyranny.

M. To deal plainly with you; it is still my firm and steady Opinion, That if the worst Case which you have here put should happen, it is better for the People to rely upon God's Providence, what shall become of their Persons, Religion, and Liberties, than to provoke his Wrath by any Rebellion, or Resistance of the King or his Officers: since I do not think that even the Defence either of our Religion, or of those Liberties and Privileges which have been granted by our former Kings to the Subjects of this Nation, can ever be counterballanced by a Rebellion and long Civil War; for besides the present Calamities which it certainly brings along with it, it commonly ends in the Destruction of the King's Person, if not the Expulsion of the Royal Line and Family; as we have seen lately in the Flight of the Queen with the Infant Prince, which was follow'd with that of the King: rather than which I think any thing, even Persecution it self for Religion, were better to be endured by us, than a Remedy worse than the Disease.

F. I am sorry you and I have discoursed so long, and so often about these matters, without being able to make each other any whit wiser, and that you are still so obstinate in your first Opinions; I must therefore beg your pardon that I cannot be of your mind, since our Principles are so different, you supposing that no Resistance of a tyrannical illegal Power, if carried on under the Name and Authority of a King, can be in any case lawful for the People or Subjects, let what will be the Consequence; whilst I (who believe the People were not made or ordain'd by God only for Kings to use them as their Slaves, or mere Brutes) am persuaded, that for the Preservation of their natural and civil Liberties and Properties, confer'd on them by the very Constitution of the Government, not by the mere Grace and Bounty of former Kings, as some of your Party affirm (and therefore of which the whole People can be the only proper Judges) they may not only take up Arms, but drive out such a Tyrant that so invades them, if they are able of themselves to do it, or else may beg the Assistance of any other neighbouring Prince, that will be so generous as to undertake their Cause. Otherwise I can see no Remedy, but that all Kings, how limited soever, may make themselves not only absolute Monarchs, but their People as absolute Slaves as those in *Turky* or *Muscovy*. And I am so much a Patron of Liberty, that I cannot think any of the Consequences you mention, such as a long Civil War, or the Expulsion of a tyrannical Prince, can be worse than constant Slavery, Ignorance, and Poverty, which are the certain Consequences of your Hypothesis, of leaving all Princes to dispose of the Estates, Lives, and Liberties of all their Subjects at their pleasure. And tho I own that War, and the loss of thousands of Lives, may happen in the defence of them, yet this State is rather sometimes to be prefer'd (if it cannot be avoided) than the other; as any Man, I think, would, if it were put to his choice, rather have a Fever once in seven Years, and come off with Life, than languish under an Ague or Consumption for the like space of Time, and die at last; since that Saying of the Poet is very true, *Non est vivere, sed valere Vita*. And now this Parallel seems very just, without making any particular Application of it.

But to return to the matter in hand; to which, what I have just now said, has been only preliminary; I shall as freely own on the other side, that it may so happen, that a whole People, or the major part of them, or the Estates of the Kingdom, or Parliament, or at least the major part of them, may entertain unjust Prejudices against the King; and by passing too hard a Censure on

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his Actions, may, by the Artifices of factious and ill Men, be drawn into Rebellion, and to take up Arms against him without any just Cause: and in this case, since there is no superior Power between him and his People, he only can be Judge, and the Appeal must then be made to God, and the Consciences of all his good Subjects, that remain still untainted, and will be ready to assist in maintaining his just Rights; or he may also in such cases implore the Assistance of some neighbour Prince, provided he take care that the Auxiliaries he shall afford him may not prove so powerful as to make themselves Masters of the whole Kingdom and Nation; as we often find in History to have been the Event of such foreign Assistances.

These things being premised, I think it not at all difficult to answer your Queries: As first, why the two Houses of Parliament could not justly or legally call King *Charles* to an account for what he had done contrary to Law; and secondly, why it should be treasonable for them to pass a Vote, that the King's raising a Guard at *York* was in order to make war upon the Parliament, in breach of his Coronation-Oath, and contrary to the Trust reposed in him. And yet that the Convention's voting that King *James* the Second, by the Breach of the *Original Contract*, and by withdrawing himself out of this Kingdom, had *abdicated* the Government.

Now to answer your Queries in order, I shall let you know, that, in the first place, I utterly disavow all *coercive Power* in one or both Houses of Parliament, to call the King to an account for any Actions committed by himself, or his subordinate Ministers or Officers; and therefore all the Proceedings of the Rump-Parliament against King *Charles* were absolutely void and illegal, not only from the Incompetency of the Authority, they being but the sag-end and remainder of the Members of that Parliament, and without any concurrence of the third Estate, or Peers of *England*; who (tho at that time excluded by force, yet) have always had a joint Power with, if not superior to that of the Commons, in all such cases of the highest importance: but indeed because both Houses are the King's Subjects, and call'd by his Writ, and have sworn Allegiance to him, therefore they could not pass Judgment upon him as a Criminal, since he was still their Sovereign; neither could they proceed against him as an Enemy, because by the whole Narrative of these Transactions it appears, that he was unwillingly drawn into that unhappy War, and acted only upon the Defensive, in maintenance of his just Right of the Militia, and other Prerogatives of the Crown, which a prevailing Faction in both Houses would then have deprived him of against his Consent.

This being so, the other part of the Question is easily answer'd, why the Convention's Proceedings against King *James* should be justifiable, and not those of the Rump-Parliament against his Father, since the Instances are by no means parallel; for the Convention did in no wise take upon them to judge or pass Sentence upon the King, as one accountable to them for his Actions: for they only gave their Vote or Censure upon what he had done, as that which had already divested him of all Right to the Crown, and in effect imply'd an absolute *Abdication* of the Government. And I have already proved in our former Conversation, that when a King plainly declares by his Actions, that he will no longer govern by Law, and refuses to amend the Breaches that have been made by his subordinate Ministers, he thereby himself becomes answerable for those Miscarriages. And tho I grant his Person is still unaccountable and unpunishable, for want of a superior Power to condemn him; yet he may so carry himself towards his People, in wilfully going about by force to subvert the Religion and Laws, that upon his obstinate Refusal, or wilful putting himself out of a Capacity to amend those Breaches he himself hath made, or at least his inferior Ministers by his Order, he may thereby forfeit and lose the very Crown it self, and all Right to govern any longer: but still (as I have formerly said) this wholly proceeds from his own exorbitant Actions, and not from any coercive Authority the Parliament can pretend to over his Person. Thus for example, if in the State of Nature, a Husband carry himself so cruelly towards his Wife, as that she can no longer live in safety with him, she may lawfully quit his Bed and Family, and provide for her own safety somewhere else; after which, I doubt not but in that state the Bond of Matrimony is thereupon dissolved: and this not from any Authority the Wife has over
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the Person of her Husband, but from the great Law of Nature, of *Self-Preservation*; or else it would lie in the power of any Husband to tyrannize, nay to murder his Wife whenever he pleased, and she could have no Remedy left to provide for her own Safety. The case is so plain between the People and a tyrannical Prince, that I think it needs no farther insisting upon, than to apply what I have now said in general to King *James* himself in particular: And I shall but lightly touch upon this Head, having at our eleventh Conversation fully proved, that the King's late Actions and Proceedings, mention'd in the Prince of *Orange's* Declarations, especially that of his assuming to himself a Power of dispensing with all Laws, were Breaches of the *Original Contract* between the King and his People: and that there is such a Contract, I think I have sufficiently proved at our tenth Meeting; and if so, what the King hath done tended to a Dissolution of the Government, and not being redressed, gave the People a Right of Resistance by Force to such illegal Judgments and Commands. And tho I grant, so long as there are any hopes left that the King would desist from, and redress those Violations, he ought not to suffer either in his Person or Dignity, but only those that assisted him in those exorbitant Actions, since the King's Person should always be sacred and unpunishable; yet when he plainly declares, that he will not redress them, and puts himself out of a Capacity of doing it, by leaving the Kingdom without offering any Satisfaction for what he has done, nay, doing his utmost to leave the Nation in a state of Anarchy and Confusion: if this be not an implicit *Abdication* of the Government, when the King thus absolutely refuses to govern any longer upon those Terms and Conditions on which he has received the Crown, I know not what can be reckoned one, unless you would have an express *Abdication* or *Renunciation* of it, which I suppose cannot be expected in this case. And if the Convention of Lords and Commons upon their Meeting have passed their Votes that it was so, it does not therefore follow that their bare voting so, can make it so, if it were not so before. However, you must own that it is a solemn Declaration of the Sense of the Representatives of all the Estates of the Kingdom, and ought to be acquiesced in, and submitted to by all the Subjects of it, unless you can shew me better Reasons to the contrary than you have hitherto done. So that after all your aggravating Expressions, this Vote of theirs did not at all touch the Person of the late King, nor yet deprive him of his legal Authority, since he had already done sufficient to forfeit and divest himself of it: And if he hath happen'd to be the greatest Sufferer in this *Revolution*, and that his evil Counsellors, corrupt Ministers and Judges, with other inferior Officers, have escaped Censure and Punishment, this hath fallen out from the Iniquity of the Times, and the great multitude of Offenders who have been engaged in the same bad Cause, and partook of the same Guilt with the Papists themselves: And you know very well in what manner, by the tacit Consent of two prevailing Factions, those Offenders came to escape. But I hope the Votes of the Convention will however stand as a perpetual Landmark and Boundary, to warn all subordinate Officers for the future not to break in upon the Liberties and Privileges of the Nation, lest a worse thing befall them.

But to come to your last Objection: The Incompetency of Authority in the Convention to censure the King's Actions, which because they did not meet upon the King's Writ, you will needs fancy that they had no more Right to sit or act than the Rump-Parliament, when all the rest of the Members were secluded, and the House of Lords voted useless. This is indeed a great mistake, and which you could not have fallen into, had you consider'd as you ought, that the People and their Representatives, the Estates of the Kingdom, were before Kings in this Nation, who often owed their Crowns to their Election, as I have already proved at our fifth and twelfth Conversations; to all which I did not find you had any thing considerable to return by way of Answer: and that upon all manner of Emergencies and Revolutions of Government, the Estates of the Kingdom, or Parliament, have always exerted their Authority, either without any Writ or Summons from the King, or else have sat after the Kings who call'd them had resign'd their Crowns, and abdicated the Government. And to give you Instances of this, I shall begin with the great Council of Parliament at *Running-Mead*, consisting of all the Nobility and People of *England*, in which *Magna Charta* was first granted: and tho it was not call'd by

King

King *John*, yet it was by him acknowledged for a lawful Assembly of the Estates of the Kingdom, as you may see in *Matt. Paris*: and pray also consult *Matthew of Westminster*, and *Walsingham's Chronicle*; and you will there find, that upon the Decease of King *Henry* the Third, the Estates of the Kingdom met in a Great Council at *Westminster*, by their own Power and Authority, and there solemnly recognized his Son *Edward* the First (who was then, as they supposed, in the Holy Land) his Title to the Crown, and order'd him to be proclaim'd King, when as yet they knew not certainly whether he was alive or dead. And when his Son *Edward* the Second was deposed in Parliament, and had also solemnly resign'd his Crown to his Son *Edward* the Third, the same Parliament that had deposed the former King, sat and acted without any fresh Summons under the new one, and there passed several Statutes, as you find in *Rastal* or *Keeble*. And the like happen'd upon the Deposition and Resignation of *Richard* the Second; the same Parliament that deposed him sat some time after under *Henry* the Fourth, and there were divers Statutes passed (as there were also in the first Parliament of *Edward* the Third) which are accounted good Laws at this day, without the Confirmation of any subsequent Parliaments, as you may see likewise in the Statute-Book, and Parliament-Rolls themselves. So that when our Great Council have once met on such absolutely necessary Occasions, it is not the Authority that calls them, but their own inherent Right and Power from the Constitution of the Government, that gives sufficient Sanction to their Proceedings. I did, as I remember, at our last Meeting but one, slightly mention these two last Instances upon another Occasion; but since they now serve for my present purpose, pray pardon me if I take the liberty to put you in mind of them again.

M. I confess you have given divers specious Instances of the independent Power of Parliaments upon any great Emergencies and Revolutions of Government; but yet I have very much to except against most of them. As for the first Instance, of the Great Council at *Running-Mead*, I have long since told you my Opinion of it, that it was a riotous and unlawful Assembly, met there against the King's will; and tho I am not for abrogating the *Great Charter*, since it has been so often confirm'd by the voluntary Sanctions of so many succeeding Kings, yet I must freely tell you, I think it was obtain'd by mere Force and Rebellion at first. Indeed your next Instance of the Assembly of Estates that met to recognize *Edward* the First, is more to your purpose; but then I pray consider, that this was in a case of absolute Necessity, in the absence of the King, and for the publick Peace and Quiet of the Nation, to settle the Government in good hands till his Majesty's Return. And admit I should grant such a way of proceeding may be good for the doing of a necessary and lawful Act; yet it does not therefore follow that a Convention shall have power to make Laws without a King, much less to censure his Actions, and actually depose him. Therefore give me leave to tell you, as you your self cannot justify the two Houses of Parliament in their deposing King *Edward* and *Richard* the Second, so neither can their sitting and acting under their Successors be defended, according to the strict Rules and Customs of Parliament; because they were summon'd by their Writs to *meet*, *consult*, and *act* with the King that call'd them, and none other; and when he either resign'd the Crown, or deceased, their Authority was likewise at an end.

F. I shall not only answer the Objections you have now brought against my Instances from matter of fact, but shall, I hope, confirm them with such fresh ones as you will not be able to answer. First then, as to what you object against the Validity of the Great Council at *Running-Mead*, I think it will not answer the end for which you bring it; since I have already, in our ninth Conversation, sufficiently vindicated the Legality of that Assembly: And give me leave now to add, that both the Legality of that, and the Charter then granted, were sufficiently asserted by King *Henry* the Third's confirming, or rather new granting of it in the first Year of his Reign, by the Advice of his Uncle *William* the *Mareschal*, Earl of *Pembroke*, and *Guallo* the Pope's Legate; who plainly found, that even those Noblemen and Gentlemen that took part with the young King against Prince *Lewis* of *France*, would never be contented till it was done. And tho the same King *Henry* often confirm'd this Charter, as did also his Son *Edward* the First, yet it was not because their first Confirmations

tions were not valid and sufficient, but from the want of their being observed as they ought to have been, by reason of the frequent Breaches that had been made upon it, either by those Kings themselves, or their evil Counsellors and corrupt Ministers; from whence, upon every notorious Violation of it, the Estates of the Kingdom were not satisfied till they had, by giving the King fresh Subsidies (as you will find mention'd at the end of those Charters) procured new Confirmations of that Charter, as also of that of Forests; and those often fortified with dreadful Excommunications denounced by the Bishops against all those that should for the future presume to infringe them: yet all this was scarce sufficient; so prevalent were evil Counsellors in those days (as well as ours) over our Kings, and so great Temptations did they find often to violate them.

As for what you say in mitigation of my Instance of the Great Council that met without any Summons from the King, to recognize King *Edward* the First, you have granted as much as I would have; which is, That such an Assembly is justifiable, *when the publick Necessity and Peace of the Nation require it*: Nor do I my self maintain or desire any more; but then I do not give the Estates of the Kingdom a Power upon every turn to meet, whether the King will or not. Yet certainly, upon such great and extraordinary Occasions, they had, and still have such a Power to assemble, and act as a Parliament, and to make Laws too, notwithstanding they were never call'd by the King's Writ at first. Besides the Precedents of the first of *Edward* the Third, and first of *Henry* the Fourth, already mention'd; and against which you have nothing to urge, but the Law and Custom of Parliaments at this day; which does not hold neither, since even in our own Memory (as I told you once before) the Convention that recall'd King *Charles* the Second, passed the Act of Oblivion, and made many other Statutes. And tho it is true that they were confirm'd by the following Parliament, yet that those Acts had been good without any such Confirmation, appears by several private Acts which were then passed, without ever being confirm'd at all, and yet are still acknowledged to be good Statutes at this day.

And that this independent Power of the Great Council of the Estates of the Nation, is not peculiar to *England*, but has also formerly been in use in other neighbouring Kingdoms, whose Princes are now looked upon as absolute Monarchs; I have already proved * from several Instances both in *France*, *Spain*,^{* Vid. Dialogue 11.} and other Countries: as in particular that Great Assembly which met upon the Death of King *Charles* the Fair, to determine to whom the Right of the Crown then belonged, whether to our *Edward* the Third, or *Philip* Count of *Valois*, who both laid claim to it; and upon solemn hearing of the Commissioners of both the Competitors, the Estates adjudged the Crown to the latter as right Heir, by virtue of the *Salique* Law, tho further removed in Blood than King *Edward* from the King that last deceased. The like Decision I also told you the Estates of the Kingdom of *Castile* made between the pretended Daughter of *Henry* the Impotent, King of *Castile*, and his Sister *Isabella*, who was afterwards married to *Ferdinand* King of *Aragon*; when upon a solemn hearing of the whole matter, the Estates adjudged the Crown to the Princess *Isabella*, and set aside a Daughter the Queen had by a Favourite, as Illegitimate. And I have again mention'd this piece of History, because it comes nearest to the present Case, concerning the Prince of *Wales*; for who shall judge of his Legitimacy, if there appear any thing sufficient against the Reality of his being born of the late Queen, but the Parliament, or Great Council of the Nation? which I am sure you cannot as yet accuse of any Partiality in this Affair.

M. I am satisfied, from the Authorities you have brought, as well as the Reason of the thing, That in case the Title to the Crown is any way disputable, that the Great Council of Estates ought to judge of it, in all Kingdoms where there are any such Assemblies. But I think the Case of this young Prince's Legitimacy to be so clear and indisputable, that there can be no just occasion for any such Trial. However, if there should appear any such Necessity, I suppose the King and Queen, his Parents, would not be against the putting the Decision of this Matter to a Free Parliament, consisting of those of the true Church of *England*, and not of *Whigs* and *Fanatics*. And as for the Power of the Estates to meet on other necessary Occasions, such as recognizing their lawful Prince, I shall not oppose that neither; tho I do not thereby allow them

an unlimited Power of deposing Kings, or of putting the Crown on what Head they please, to the prejudice of the right Heirs by Blood.

F. I am glad you and I are so far agreed in the main; tho I cannot but observe, that you are under a very great Mistake, in limiting the Power of the Estates of any Kingdom, only to the bestowing of the Crown on those you call the *Right Heirs*: for pray tell me, who can better judge of this than they? And might not the Estates of *France*, if they had so pleased, have adjudged the Crown to King *Edward*, as well as to *Philip of Valois*; and had not then all the Subjects of that Kingdom been obliged to acknowledge him, notwithstanding their pretended *Salique Law*? But the Estates of the Kingdom, or Parliament in *England*, have a higher Power; for it is enacted by the Statute of the 11th of *Henry the Seventh* (which I have already cited, tho on another account) *That no one whatever, who shall serve the King for the time being in his Person, or shall yield him true Allegiance for the same, either by serving him in his Wars, or elsewhere, shall suffer any Attainder or Forfeiture for so doing.* Where you may easily take notice, that the Intent of this Statute is to indemnify the Subjects of *England*, who shall assist and serve the King for the time being (let his Title be what it will.) Now how can the Subjects of this Kingdom distinguish or judge who is lawful King, or has the best Title to the Crown, but by the Judgment and Recognition of their Representatives, the Estates of the Kingdom? Nor is there any difference in this Case between an Act made by a King *de Jure*, and one that is only *de Facto*; for you can't deny that King *Henry VII.* before his Marriage with the Princess *Elizabeth*, was any other, and after her Death he could be no better: and upon your Principles likewise, Queen *Elizabeth* her self had no more than a Parliamentary Title; and yet she made an Act in the thirteenth year of her Reign, That the King or Queen, with the Consent and Authority of Parliament, might limit and alter the Succession of the Crown as they thought fit; which Act I have prov'd to you, at our last Meeting but one, to be still in force: and I now repeat it, to refresh your Memory, and let you see that this Revolution, and the present Limitation of the Crown, is justify'd by both those Statutes; and does not only differ in the Original and Prosecution of the Quarrel, from the Civil War begun and carry'd on by the Long Parliament, but also in the Issue of it; that ending, not only with the Deposition and Murder of the King, and the setting up of a Commonwealth, but with the Expulsion of the whole Royal Line, and the Destruction of the Church and Episcopal Government; whereas it is now (God be thank'd) quite otherwise: for tho King *James* be declar'd incapable to govern, yet the Convention has thought fit to place the Crown on the Heads of his Son-in-law and Daughter, whom they look'd upon to have most Right to it. And as for the Church of *England*, all things remain in the same State as they were in King *Charles's* Reign, and I hope will continue so, or rather be reform'd for the better: and therefore I think I have sufficiently justify'd the present Revolution from your Objections, and shewn you, That an old Cavalier, or true Son of the Church of *England*, may very well approve and comply with this present Change; and yet at the same time keep the 30th of *January* without any Hypocrisy; and may also still maintain, that the cutting off King *Charles's* Head was a horrid Murder and Treason in those that were guilty of it.

M. As for the Conclusion of your Speech, I wholly agree with you, but not in the Premises: for tho the Crimes the Nation is guilty of in one Case, are not so horridly cruel and barbarous as in the other; yet certainly no good Subject can justify the taking up Arms against the King upon any pretence whatsoever, much less presume to declare, *That he hath violated (I know not what) Original Contract, and that the Throne thereby is become vacant*; and then placing any one therein, but him whose Right it is: since I look upon the Oath of Allegiance of perpetual Obligation upon all those that have taken it, not only to his present Majesty, but the Heirs of his Body begotten; so that you may keep the Thirtieth of *January* as much as you please: yet I doubt you cannot excuse those of your Party that have been the Contrivers and Abettors of this Revolution, from much the like (tho I will not say the very same) Crime, with that of the Rump-Parliament. And as to what you say concerning the present flourishing Condition of the Church, and your Hopes of the farther Reformation of it, I wish I could see it; tho I cannot now expect it,

as things are like to go; since some of her Members have, by the taking up Arms, and joining with the Prince of *Orange*, given the Enemies of our Religion a great advantage over them. And what will become of the Church, when the Archbishop of *Canterbury*, and all other conscientious Bishops and Clergymen, shall be deprived for not taking the Oath to the present Government, I dread to think; for I can foresee nothing but a most fearful Schism, like to be the Consequence of that Act.

F. I thought I had sufficiently proved in our former Conversations, that taking up Arms in defence of our Religion and Civil Liberties, when no other Remedy could prevail, was not unlawful, according to our Constitution. Secondly, That there is such a thing as an *Original Contract*, however ignorant you are pleased to make your self of it. Thirdly, That by the *Abdication*, or Forfeiture of King *James* (call it which you please) the Throne did really become vacant; and that it is legally filled by their present Majesties. That the Oath of Allegiance is of perpetual Obligation, I also grant; but it is still on condition, that the King shall likewise truly keep and perform that part of the Contract contain'd in his Coronation-Oath, without going about to alter and invade our Religion and Civil Liberties by an armed Force, and arbitrary Power: and if this were not so, we should owe it wholly to the King's mere Favour and Goodwill, if he did not make us all *Papists*, nay *Turks* and *Slaves*, whenever he had a mind to it. These are indeed the Principles I have all along maintain'd, and I hope I shall never have occasion to be ashamed of them; therefore since it now grows late, and that I find it impossible to make a Convert of you, and bring you over to my Opinion, I will bid you good-night, and part as much your Friend as before: for I am satisfy'd of your Sincerity, and that it is only Prejudice, or a mistaken Zeal, and too scrupulous a Conscience, that hinders you from coming over to our side.

M. I thank you for your kind Thoughts of me; and in Return can only tell you, that I think your Error proceeds from much the same Causes as you suppose mine does, only I wish I could add that of a too scrupulous Conscience: however I am obliged to you for the Benefit of this Evening's Conversation, in which I must own I have received a great deal of light in many things which I was before ignorant of; and so I take my leave, and shall continue your real Friend and Servant.

F I N I S.



An Alphabetical

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Chief Matters contain'd in this
BOOK ; which also, explaining the Old
Terms relating to our Constitution, may serve
instead of a GLOSSARY.

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